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CHARITABLE CORPORATIONS

THEIR DEVELOPMENT AND LEGAL STATUS IN MASSACHUSETTS

A Thesis

submitted by

Mary C. Robinson
(A.B., Radcliffe College, 1907)

in partial fulfilment of requirements for
the degree of Master of Science in Social Service

1939

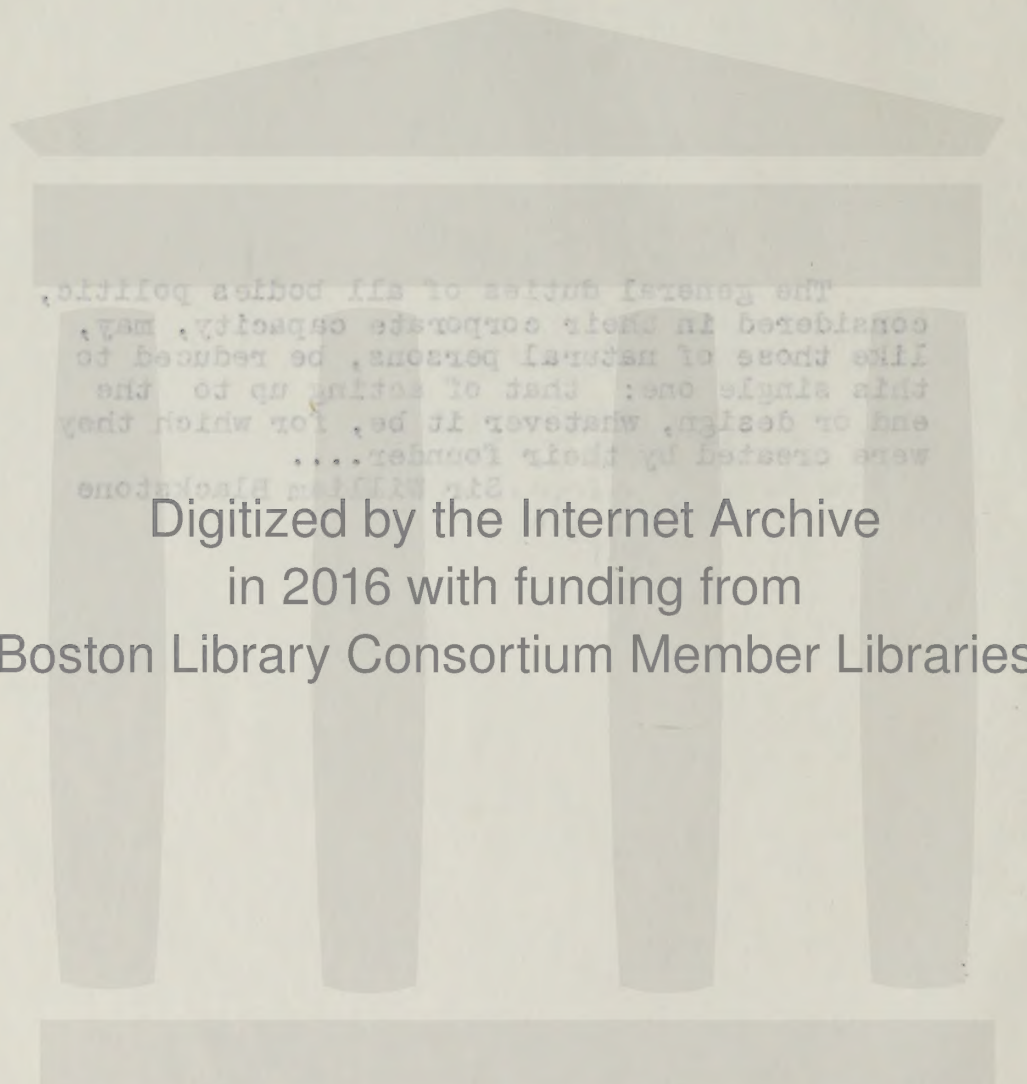
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TABLE OF CONTENTS

Preface	iii
Chapter I The general duties of all bodies politic, considered in their corporate capacity, may, like those of natural persons, be reduced to this single one: that of acting up to the end or design, whatever it be, for which they were created by their founder....	1
Chapter II Sir William Blackstone	2
Chapter IV The Recognition of Corporations.....	35
Chapter V Judicial Interpretations of Charitable, Civic, Educational and Religious Purposes.....	47
Chapter VI Nineteenth Century Charitable Corporations.....	54
Chapter VII Trends in Nineteenth Century Charitable Corporations.....	61
Chapter VIII Summary and Conclusions.....	74
Bibliography	82



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T A B L E O F C O N T E N T S

	<u>Page</u>
Preface	iii
Chapter I Background.....	1
Chapter II Statute of 43 Elizabeth, Chapter 4.	13
Chapter III The Development of a Public Policy Regarding Private Charities.....	22
Chapter IV The Mechanics of Charitable Corporations.....	33
Chapter V Judicial Interpretations of Charitable, Civic, Educational and Religious Purposes.....	47
Chapter VI Nineteenth Century Charitable Corporations.....	64
Chapter VII Trends in Charitable Purposes.....	81
Chapter VIII Summary and Conclusion.....	94
Bibliography	101

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T A B L E O F C O N T E N T S

<u>Page</u>		
iii	Preface
i	Chapter I Background.....
13	Chapter II Statute of 43 Elizabeth, Chapter 2.
22	.....	Chapter III The Development of a Public Policy Regarding Private Charities.....
23	.....	Chapter IV The Mechanics of Charitable Corporations.....
47	.....	Chapter V Judicial Interpretations of Charitable, Civic, Educational and Religious Purposes.....
64	.....	Chapter VI Nineteenth Century Charitable Corporations.....
81	.....	Chapter VII Trends in Charitable Purposes.....
94	.....	Chapter VIII Summary and Conclusion.....
101	.....	Bibliography.....

P R E F A C E

The concept of charitable corporations, as they have developed in Massachusetts, has been chosen as a thesis subject for several reasons.

One arises from a personal interest in that area of social service. For many years the writer has been associated with the mechanics devised to express and actuate charitable purposes. This relationship with groups sensing standards higher than themselves has meant an identification that has created a feeling-awareness equally as vital as that which grew out of individual case work situations in the earlier years.

Such association has developed a faith, or a philosophy that men singly or in groups have magnified their social vision only through the projection of an ideal, not always possible of attainment, to be sure, yet seldom befogged by the limits of human imagination and striving. Their understanding of other-regarding attitudes, motivated through philanthropic organizations, merits recognition. While charity may have been given legal delineation through statutory enactment and judicial opinion, there has evolved through the years the personal conviction that a charitable

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corporation may also be evaluated as a social instrument.

Another reason arises from the expressed ignorance on the part of many members of the legal profession, who, however brilliant of mind, state frankly that they have never formed charitable corporations and they are surprised at the numerous, technical details that accompany the acquisition of a charter.

Finally, the general interest in social administration would appear to be the order of the day. The altruistic spirit in the American social structure synchronizes with the landing of our forefathers on these shores. This has not ceased with the colonial and provincial governments, but has consistently expanded in the Commonwealth. Statistics in the last published report of the State Department of Public Welfare, in the number of petitions from groups desiring to operate under private charitable charters, have been exceeded only twice in the last two decades.

The method pursued to develop the subject has been a historical approach to the question of the power of equity over trusts and of what charitable uses consisted in 17th Century England and earlier. Because it has been so often stated that Massachusetts stands alone in her system of public supervision over private charities, an inquiry was made, by addressing Public Welfare Departments in other states as to their policies in regard to incorporation of

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We present, first, a brief survey of early charity. Following this, the fourth Chapter of the 43d Parliament of Elizabeth is discussed in detail, since the influence of that document on the administration of charitable trusts in the United States cannot be overemphasized. Next, several important dates in the social development of Massachusetts, when attention was focussed on the proper administration of private charities, are considered and succeeding these is a minute description of the proceedings precedent to the granting of a charitable charter. Then there are included certain legal definitions of charity with citations of cases in the charitable, educational, civic and religious categories that have

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helped to establish a judicial attitude toward charitable uses. Since it would be a pity to leave the field without noting the activities of some of the social agencies in the Commonwealth, the two final chapters treat of a few as they operated in the 19th Century and in more recent days. Only in the conclusion will there be an attempt to evaluate charitable organizations with reference to their administration.

Any reflection on social welfare makes an appeal both to the emotions and judgment. In its philosophy it must expand with the advancement of civilization and be tempered to the changing needs of mankind. When new human extremities arise, new charitable aids must be found. This paper purports to be nothing more than a restricted and cumulative reviewing of charity as it has been collectively administered. While there may be a conscious, or unconscious, thought to accentuate social interpretation, one must acknowledge the truth that most charitable intent is carried out through the legal entity known as the corporation.

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Chapter I

Background

Privatus illis census erat brevis,
Commune magnum.....Horace

The voluntary growth of charitable, educational, civic and religious organizations in America is an achievement in democracy. Intangible thought made concrete by social institutions such as child-placing agencies, children's homes, havens for the aged, family welfare associations, hospitals for the sick and infirm, church affiliates, visiting nursing groups, guidance centers for youth, settlements, community houses, playgrounds, boys' and girls' clubs, industrial homes, vocational services, health camps, nursery schools, habit clinics and diagnostic centers, has sprung from the altruistic energies of men and women for whom it has counted off years of generous, unpaid toil.

It would be impossible to understand this human urge without presenting a brief, historical retrospect. Charity is probably as old as civilization itself. One writer suggests that in the earliest communal relationships, in such acts as the simple, neighborly call on the sick and the sorrowing, there may have been the beginnings of our social structure. Others would see in the great commandment¹

1. St. Mark 12, verse 31.

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Private life comes first
Commonwealth.....Horace

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another origin. The early books of the Bible reiterate concern for the needs of others, as the following excerpts show.¹

Verse 21 in Exodus, Chapter 22, defies the vexing and oppressing of the stranger. Deuteronomy, Chapter 24, verse 19, commands: "When thou cuttest down thine harvest in the field, and hast forgot a sheaf in the field, thou shalt not go again to fetch it; it shall be for the stranger, for the fatherless, and for the widow". The following verse exhorts: "When thou beatest thine olive tree, thou shalt not go over the boughs again; it shall be for the fatherless and for the widow". Nehemiah in Chapter 5, verse 7, states: "I rebuked the nobles and the rulers and said unto them, ye exact usury every one of his brother".² The same idea is brought out in Ezekiel, Chapter 18, verses 8 and 9: "He that hath not given forth upon usury, neither hath taken any increase-- he is just". Verse 7 places him in the same category: "Who hath not oppressed any, but hath restored to the debtor his pledge...hath given bread to the hungry, and hath covered

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the naked with a garment". The fifteenth Psalm specifies that only he shall dwell in the holy hill who: "putteth not out his money to usury, nor taketh reward against the innocent".

However worthy the foregoing examples prove the Hebrew system of charity to have been, it never became part of the judicial set-up of any other nation. It was more of a legally defined custom for charitable acts and hospitality. Nor is there anything suggestive of a law of charitable uses in the stiff, Spartan code of Lycurgus, which authorized the throwing of the undesired into the cave on Mt. Taygetus. Physical cruelty, including starvation and flogging, was a civic right. Early Roman customs sanctioned such barbarities as the hurling of the disloyal from the Tarpeian Rock and the atrocities of the second Tarquinian have become historic. During the Roman Empire, however, the Christian ideals of charity were practiced. Warner points out in "American Charities" that even before the Christian era, there were refuges in China for the aged and sick poor, free schools for poor children, free eating houses for wearied laborers, associations for the distribution of secondhand clothing, and societies for paying the expenses of marriage and burial among the poor.

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of the Christian religion.¹ It is natural, therefore, to expect that law would favor charity and this is true at an indefinite, early period of English judicial history. Not founded on any statute, it existed independently of any law. Charitable uses are known to have been recognized and enforced in England before the Norman victory at Hastings and they were frequently employed during the Middle Ages.

The English charitable system centers about the fourth statute passed in the 43d Parliament of Elizabeth. In that country it was not the exercise of the ordinary jurisdiction of equity over trusts, but a jurisdiction strengthened by the prerogative of the crown and the statute. The main object of the law of charitable uses was to turn over to the hands of a commission a royal power, to be subject only to the controlling authority of the Lord Chancellor. Many things such as technicalities in the common law and restraining statutes, as for instance those of mortmain, tended to defeat benevolent interests.

The English law of mortmain dates from the 13th Century and forbade conveyance of land to a corporation.² Although there were numerous exemptions from this restriction, no purchase of land by a corporation was legal without a special Act of Parliament or a license. Because the

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purchases were usually made by ecclesiastical bodies, members of which were reckoned as dead persons in law, the land so held was considered as if "in mortua manu".¹ Property thus placed in the "dead hand" of the church meant that the crown and overlords during the period of feudal rule were cut off from many revenues. The charge of the license, even in small benefactions, had grown so great that people were loath to foster charitable and pious uses. Statutes of mortmain, therefore, were responsible for a decrease in the number of donors to public and private charities. Regulations had been set up before Elizabeth's reign which show that the nation was concerned to see that charitable purposes were not defeated. The royal authority desired to see charities increase, since the closing of the monasteries in the period of the Reformation put the burden of the care of the poor on other agencies than the ecclesiastical.

In 1414 a statute was passed providing for the investigation and correction of abuses in hospitals,² "founded as well by the noble king of this realm and other lords and ladies both spiritual and temporal, as by divers others estates, to the honor of God and of his glorious Mother, in aid and merit of the souls of said founders to the which hospitals have given a great part of their movable goods for

1. Blackstone: Vol. I, Chapter entitled "Corporations"

2. 2nd Henry V, Chapter I.

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the building of the same and a great part of their land and tenure therewith to sustain impotent men and women lazars, men out of their wits and poor women with child and to nourish, relieve and refresh other poor people in the same". In 1529 another statute was enacted stating that where there was more than one executor named in a will and one or more refused to act, less than all of them in such cases might bind the estate. The purpose of the wills in question were stated to cover "charitable deeds to be done and executed by their executors for the health of their souls", while the result of the executors' refusal to act (an evil corrected by the afore-mentioned statute) was declared to be that "legacies and bequests made by the testator to his family and for other charitable deeds to be done for the wealth of the testator's soul were often unperformed".¹ Two years later in 1531 a statute was written against superstitious uses.² Its preamble recites that conveyances had been made to the use of parish churches, fraternities and brotherhoods "by common consent of the people without any corporations, or to the uses and intents to have obits perpetual, or the continual service of a priest forever, or three score or four score years, and that out of such conveyances, there had grown and issued to the king and other lords and subjects

1. 21 Henry VIII, C 4

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Generally speaking the United States Supreme Court has recognized the Statute of Elizabeth, as well as the fact that the power of equity over trusts was anterior to this act and was embedded in the English common law which was adopted in America.

The question as to whether America should have attempted to recognize in her social relations a system of charitable law that had its roots in a country with a different form of government and customs has involved much controversy. In England,¹ custom upheld indefinite charitable gifts by the

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With her it was not the exercise of an ordinary chancery jurisdiction, but one fortified by royal sanction and the Statute of 43 Elizabeth. America in any case would have had to discountenance the royal rights, and some states early in their history actually did away with the statute itself.

However, there is probably nothing in the American form of government which would mark the general principles of the law of charity as not applicable to conditions within our country. The obligation of caring for the social, civic and intellectual welfare of citizens should not necessarily depend upon a process of government, but be equally binding, whatever the form of rule. The question has been raised as to whether the English charitable doctrine itself rested on 43 Elizabeth.

It may well be a matter of inquiry, therefore, as to how much the present authority and doctrines of the court of chancery in the matter of charitable uses depends upon the Elizabethan statute and in what degree upon the general jurisdiction as a court of equity to enforce trusts. The main purpose of the law of charitable uses was to place in the

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hands of a commission a difficult power of the crown, subject only to the controlling and final power of the Lord Chancellor. The jurisdiction of the latter has been enlarged, whether by the operation of the statute, or by an assumption of power on his part based on the statute by construction.¹ In practically every case, nevertheless, the statute was the deciding word, while the question of whether equity had jurisdiction outside of it was apparently not so material.² The better opinion of English jurists leans toward upholding the inherent power of equity over charitable trusts.³ The fact that an entirely new jurisdiction had been created by the statute, did not seem to enter the mind of the one drafting it, Sir Francis Moore.⁴ History has not shown that a new jurisdiction was created.

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1. 1844, *Green v. Allen*, 24 Tenn. 170, 190.
 2. 1827, *Witman v. Lex*, 17 Am. Dec. 644 (Pa.)
 3. 1932, *Hamburger v. Cornell University*, 199 New York; also, 1858, *Preachers' Aid Society v. Rich*, 45 Me. 552, 559.
 4. For readings by Moore on the Statute, *Vid. Duke on Charitable Uses*, 122, 191.
 5. *Supra* p. 7, note 1.

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2. 1827, Wilman v. Cox, 17 Am. Dec. 244 (Pa.).

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according to the intent of the donors would be inconsistent with a theory that such charities had no legal existence. If one were to suppose that charitable donations had been void before the Statute, then the proceedings which it authorized were intended to deprive heirs of their property and to establish a class of eleemosynary factors in violation of vested legal rights. The conclusion is forced that the Statute, not creating any new equity jurisdiction, actually recognized an existing inherent power of chancery over charitable trusts.

The whole subject, however, was in need of clarification in the United States on account of an early United States Supreme Court case.¹ This case arose under the law of Virginia, a state in which the Statute of 43 Elizabeth, Chapter 4, had been abolished by the legislature and there could be no support, so Chief Justice Marshall wrote, from any of its provisions to sustain a bequest which the Trustees of the Philadelphia Baptist Association believed they should be permitted to accept.² The research incident to the finding

1. Philadelphia Baptist Association v. Hart, 17 U.S.(4 Wheat), 1, 1819.

2. Later, in 1832, the Virginia Courts took the stand (24 Am. Dec. 650) that charitable trusts stood on the same footing as any other trust. The Virginia charity system would therefore appear to have been based on an error of the U.S. Supreme Court (1819), which error also fixed the Maryland Charity law as well as that of West Virginia and the District of Columbia. New York did not recognize the English charity doctrine until the Tilden Act of 1891.

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Our particular interest would be the pertinency to the Massachusetts charitable doctrine. In general, the development of the law of charities in the different states is interwoven with their early history. In some states, certain testamentary gifts were made unlawful, or trusts abolished or modified and in others there was a repeal of all English statutes, or an adoption, merely, of the common law.² New York in 1788 repealed colonial statutes and the first compilation of the laws of that state in 1789 contained none of the English statutes, thus by implication repealing the Statute of Elizabeth. When the Pilgrims landed at Plymouth in 1620, they came as British subjects and acknowledged allegiance to the crown. The provincial charter following the colonial, and the State Constitution succeeding both of these, confirmed the existing laws, and these had

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The very nature of a charity is a perpetuity. The rule against perpetuities was devised to prevent the perpetual entailment of estates and so provide for free conveyancing. We have shown that the English mortmain statutes discouraged bona fide charities,¹ even when created for other than religious purposes. One of the main purposes of the 43d Parliament of Elizabeth was to clarify the entire charitable situation and the Statute was drawn to designate those eleemosynary corporations that might be legitimate; it could well be termed a statute of exceptions and was intended to make the existing mortmain statutes inapplicable to the charities listed therein. Having shown cause for the passage of the Statute, we shall see in the next chapter what was the content of 43 Elizabeth, Chapter 4, and how there was the attempt to provide a definite remedy against charitable abuses.

1. Massachusetts has no mortmain statute; she has been liberal to public charities, allowing a testator free rein in his charitable bequests, as long as he is of sound mind. (1912, Chase v. Dickey, 212 Mass., 555, 561.)

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Chapter II

43 Elizabeth, Chapter 4

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The lengthy enumeration of charitable uses in the 43d Parliament of Elizabeth was probably not intended to be inclusive even as applied to the needs of the times. Nevertheless, it furnishes the highest standard for determining charitable uses and virtually repealed the mortmain statutes which had been in force. Its categorical listing is descriptive rather than exhaustive and there is the implication that it should be interpreted according to the spirit rather than the letter. All of the four recognized subdivisions of charities are represented: the municipal, or civic, by the repair of bridges, ports, causeways, sea-banks and highways; the educational through the preferment of orphans in their training; the eleemosynary have the most attention, including various kinds of relief to the aged, the impotent and the poor; the religious have the least recognition, the repair of churches only being mentioned. This is understood, when one recalls the evils of mortmain

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and the threatening ecclesiastical controversies.

There has been the tendency since 1601 to enlarge rather than restrict the meaning of the Statute, which from the date of its enactment has been referred to as the law of charitable uses. Probably none since then has attempted to define charity so exhaustively, technically and unemotionally. The law appeared in book form in 1667 by George Duke of the Inner Temple, Esquire.¹ Sir Francis Moore, Kt., had been ordered by the House of Parliament to draw up the law which was "necessary for all Bishops, Cathedrals, Colledges and all Parishes in England for recovery and settling of Charitable Donations". It was not only to promote but also to preserve "publick benefactions" and it was known as an act to redress the "mis-employment of Lands, Goods and Stocks of Money heretofore given to certain Charitable Uses".

The preamble is lengthy--

"Whereas lands, tenements, Rents, Annuities, profits, hereditaments, Goods, Chattels, Money and Stocks of money, have been heretofore given, limited, appointed and assigned as well by the Queen's Most Excellent Majesty and her most noble progenitors, as by sundry other well-disposed persons, some for relief of Aged, Impotent and Poor People; some for maintenance of sick and maimed soldiers and mariners, Schools of Learning, free Schools and Scholars of Universities; some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; some for education and preferment of orphans; some for or towards the Relief, Stock or Maintenance for houses of correction; some for marriage of poor maids; some for supportation, aid and help of young Tradesmen, handicrafts-men and Persons decayed; and others for

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relief, or redemption of Prisoners or Captives, and for aid or ease of any poor Inhabitants concerning payment of Fifteens, setting out of soldiers, and other Taxes; which lands, tenements, Rents, Annuities, profits, hereditaments, Goods, Chattels, Money and Stocks of Money nevertheless have not been employed according to the Charitable intent of the Givers and Founders thereof by reason of Frauds, Breaches of trust and negligence in those that should pay, deliver and imploy the same. For redress and remedy whereof: Be it enacted by authority of this present Parliament--for the Lord Chancellor, Chancellor of the Duchy of Lancaster to award Commissions under the Great Seal of England to the bishop of every diocese and his chancellor and to other persons of good and sound behavior, authorizing them, or any more or four of them to inquire into the abuses, breaches of trust, negligence, concealing, defrauding--after inquiring--to set down orders, judgment and decrees for such of the charitable uses and intents--to stand good according to the intent until the same shall be undone and altered by the Lord Chancellor of England, or Lord Keeper of the Great Seal of England, or the Chancellor of the County Palatine of Lancaster respectively within their general jurisdictions, upon complaint by any party grieved to be made to them."

The Statute goes on to state that

"The provisions do not extend in any wise to the University of Oxford, Cambridge, Westminster, Eaton or Winchester, or to any Cathedral or Collegiate Church within the Realm, or to any city or town corporate, where there is a special governour, or to any Colledge, Hospital, or Free-School, which have special Visitors, or Governours or overseers appointed them by their Founders."

The Act did not give authority to the Commissioners afore-mentioned concerning any hereditaments granted to the Queen's Majesty, King Henry the 8th, King Edward the 6th, or Queen Mary. Anybody with a grievance might appeal to the Commissioners for redress therein..and they "must stand with equity and good conscience, according to the true intent and meaning of the Donors and Founders thereof".

Concerning the Commissions, the following had to be observed:

3. Schools of learning

13

relief, or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes; which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money nevertheless have not been employed according to the charitable intent of the donors and founders thereof by reason of frauds, breaches of trust and negligence in those that should pay, deliver and employ the same. For redress and remedy whereof: Be it enacted by authority of this present Parliament--for the Lord Chancellor, Chancellor of the Duchy of Lancaster to award Commissions under the Great Seal of England to the bishop of every diocese and his chancellor and to other persons of good and sound behavior, authorizing them, or any more or four of them to inquire into the abuses, breaches of trust, negligence, concealing, defrauding--after inquiry--to set down orders, judgment and decrees for such of the charitable uses and intents--to stand good according to the intent until the same shall be undone and altered by the Lord Chancellor of England, or Lord Keeper of the Great Seal of England, or the Chancellor of the County Palatine of Lancaster respectively within their general jurisdictions, upon complaint by any party grieved to be made to them."

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1. The number, four or more
2. Commissioners must be the Bishop and Chancellor of the Diocese, if there be a bishop, and other persons of good and sound behavior
3. Any four do suffice to make orders and decrees
4. None of the Commission shall have any part of the lands or goods in question
5. The Commission is to limit a certain time within which the Commissioners are to order, decree and certify
6. Their authority is to inquire, as well as by the Oath of twelve men or more, as by all other good ways and means

There were the following stipulations in regard to the complainants and the jurors:

1. The parties interested may have their lawful challenge
2. None that pretend title to any of the Lands, Goods, etc. in question shall be a Juror

The Commissioners were to inquire of all and singular gifts, limitations and appointments of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, Stocks of Money for twenty-one Charitable Uses in Relieving, maintaining, repairing, Educating, Preferring, Marrying, supporting, aiding, Helping, Redressing and Easing:

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2. For maintenance of sick and maimed soldiers
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3. Schools of learning

4. Free-Schools
5. Scholars in Universities
6. Houses of Correction
7. For Repair of bridges
8. Of Ports and Havens
9. Of Causeways
10. Of churches
11. Of sea-banks
12. And of High-ways
13. For education and preferment of Orphans
14. For Marriage of poor maids
15. For supportation and help of young Tradesmen
16. Of Handycrafts-men
17. Of persons decayed
18. For redemption, or relief of Prisoners
or Captives¹
19. For ease and aid of poor Inhabitants,
concerning payment of Fifteens
20. Setting out of Soldiers
21. And other Taxes"

The Commissioners also had the power to inquire into any of the following nine things:

- "1. Of abuses
2. Of Breaches of trust
3. Of Negligences
4. Of Mis-employment
5. Of not Employing

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15. For support and help of young Tradesmen
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8. Of Ports and Havens
7. For Repair of Bridges
6. Houses of Correction
5. Scholars in Universities
4. Free-Schools

6. Of Concealing
7. Of Defrauding
8. Of Mis-converting
9. Of Mis-government"

Finally, the Commissioners could make decrees for recompense to be made by any person, who, being put in trust, or having notice of the charitable uses, had broken the trust by any conveyance or conversion against heirs having assets in law or equity "according to the true intent and meaning of the donors and founders thereof...and this is the lapiditius, whereby the Commissioners and Chancellors must steer their course". Such persons as came to the Commissioners were to bring the wills, evidences, charters and writings, "whereby the Charitable Uses do appear to be given, created, limited." In the proceedings upon the Statute of Charitable Uses the warrener was to call the parties interested to the sheriff of the Counties, there was to be the oath to the foreman of the Jury and then the Inquisition indented and taken; then decrees, exceptions to a decree, answers to exceptions, appeals, and cases adjudged upon appeals. The whole course was an information in chancery and it was to be decided what were good or superstitious charitable uses within the intent and purview of the Statute.

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because of its general influence on the American charitable authority and more especially its place in Massachusetts law.¹ While charity acquired legislative recognition in the Statute, the effect, legally, was merely to regulate a jurisdiction, which was already inherent in the Chancery Courts. The Statute of Elizabeth is now almost universally recognized by every state in the United States. The famous Girard will case, engrafted the English principle of charity into American law, apparently for all time.²

Space alone restrains the impulse to reproduce here both the illuminating will of Stephen Girard, which was proved in Philadelphia, December 31, 1831, and the masterly opinion written by Mr. Justice Story of the United States Supreme Court when the heirs fought to break it. The one shows the deep interest in children of a benefactor who left millions for the education of poor white male orphans that they might be taught "facts and things rather than words and signs" and be taught "by every proper means that a pure attachment

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The Statute has always been recognized¹ in Massachusetts. The Pilgrims in 1620 landed as British subjects and pledged submission to the obligations, and claimed the

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1. A jurisdiction in equity over charities existed in Massachusetts under the Colonial Charter (Hadley v. Hopkins Academy, 16 Pick. 246, 284); also under the Provincial Charter, by the General Court (King v. Parker, 9 Oush. 81).

protection, of the laws of England as they then existed. The date of the Statute, the 7th and 20th day of October in the 43rd year of the reign of Elizabeth is interesting, approaching as it does the Virginian and Pilgrim migrations, the first of which overthrew the Statute of Charitable Uses as soon as it had power to do so, while the latter became the nucleus of a state that has always upheld it.

Note: Willard has said that it is as if the Parliament of Elizabeth had borrowed the church-reforming poet's verses for the enumeration of charitable objects:

"Save their wynnyng
And amende meson-dieux (hospitals) therenyd;
And wikkede (weyes) wightly amende;
And mys-eise folke helpe;
And do boote to brugges (bridges) that
to-broke were;
Marien maydennes, or maken hem noones;
Povere peple and prisons fynden
hem hir foods;
And set scolers to scole, or to some
othere craftes;
Releve religion, and renten hem bettere."

John Langland
(Vision of Piers Plowman, 1377)

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 Elizabeth had borrowed the church-reforming poet's verses
 for the enumeration of charitable objects:

"Save their wretched
 And amends men-servants (households) thereby;
 And widows (wages) wretchedly amends;
 And give also to the poor;
 And do best to the poor (bridges) that
 to-broke were;
 Men's maydances, or make them none;
 Poorer people and prisoners (prison)
 than his lordship;
 And set schools to schools, or to some
 others craft;
 Relieve religion, and render him better."

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Chapter III

The Development of a Public Policy Regarding Private Charities

There is no doubt that our legislation may be improved in this matter (charity),-- old as the Colony as much of it is, and based upon a system founded by Queen Elizabeth,-- still, I have a right to say that in the administration of its system the Commonwealth has had the unpaid help and counsel of some of its ablest and most benevolent men. ...

Edward Everett Hale

While there have been various attitudes in the United States concerning a public policy of state aid to private charities,¹ the authority of a state over charities originated in Massachusetts. The first annual report of the Massachusetts Board of State Charities noted that as a substitution for the establishment of additional public institutions, there might be assistance rendered private agencies from public funds.² There was also the suggestion that an effort be made to "methodize" the private as well as the public charities.

In 1858 a special commission had been appointed to investigate public charitable institutions in the Commonwealth and to recommended changes.³ On account of the in-

1. Johnson: "Public Policy and Private Charities", Chapter I.

2. January, 1865; pp. XLI-XLII.

3. Chapter 126, Acts of 1858.

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cidence of increasing costs in public relief, the first recommendation suggested the "creation of a State Board of Charities to be intrusted with the duty of permanently supervising the whole system of public charities in order to secure the greatest usefulness". On October 1, 1863 the proposed Board of State Charities became a fact and was the foundation for the present State Department of Public Welfare.¹

The aforementioned Board, unpaid, had all the powers of the old Board of Commissioners of Alien Passengers created in 1851. A recommendation in its third year was that all private charitable agencies and trusts should be required to submit an annual financial report to the State.² As far as is known, this is the first record of a process of state supervision over private organizations,³ in the enforcing of which Massachusetts has followed the logical reasoning of the law of charitable trusts which contends that all such trusts exist for the benefit of the public, are owned by the indefinite public, and as such are accountable to the

1. Kelso: History of Public Poor Relief in Massachusetts, pp. 141 et seq.

2. Idem, p. 151.

3. Primary record in state law: Acts of 1899, Chapter 259.

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sovereign government.¹ Other states may demand accountability from certain groups, some of them using a license system, but Massachusetts is apparently the only one to enforce such accounting as a primary obligation arising out of the nature of the trust.² Another recommendation of the Board was that the system of public poor relief should not be extended by the State, which would better subsidize private charities to do the work. In granting such subsidies, Massachusetts demanded a hand in their administration. The trustees whom she appointed had to give an account of their stewardship; the State subsidy system in the Commonwealth, therefore, never became the disreputable situation that obtained in many states,³ and never can, on account of an amendment to the State Constitution.⁴

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1. Cf Case: (1900) People of the State of New York (State Board of Charities Respondent) v. New York S.P.C.C., 161 N.Y. Rep. 233; "No one will contend...that the State Board of Charities has any right to an inspection of the books and papers of these corporations, or to make rules for the transaction of their business, for the obvious reason that they are not charitable institutions that come within the purview of the Constitution or the Statutes".
 2. Post: pp. 29-32 in re policy of other states toward an accounting to the central authority.
 3. Johnson: op. cit. pp. 13 et seq.
 4. (1916) Article XLVI: No grant...shall be made for the purpose of maintaining, forming, or aiding any school...or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control...of public officers...authorized by the Commonwealth.

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The statutory requirement that incorporated charitable agencies submit an annual financial report to the State is cited in Chapter 180, section 12, of the General Laws, Tercentenary Edition.¹ This recites that a charitable corporation incorporated in this Commonwealth, whose personal property is exempt from taxation, shall annually on or before November first, make to the department of public welfare a written report for its last financial year, showing its property, its receipts and expenditures, the whole number and the average number of its beneficiaries and such other information as the department requires. One of the duties of the sub-division of incorporated private charities in the state department of public welfare is the auditing of these statements. Chapter 59 in the General Laws, section 5, insertion 3, exempts from taxation: "the personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated within this Commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase".

1. Steps: Chap. 259, 1899; Chap. 179, 1901; R. L. 80, P.14; Chap. 402, 1903; Chap. 82, 1913; Chap. 170, P.1, 1930.

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1. Steps: Chap. 259, 1899; Chap. 179, 1901; H. L. 80, F. 14; Chap. 402, 1903; Chap. 82, 1913; Chap. 170, F. 1, 1920.

In its supervision of private charities today, the Massachusetts Department of Public Welfare is required to investigate for the Secretary of State all petitions from groups who desire to function under the purposes of a charitable charter.¹ It was of interest to the writer to inquire of the Executive Secretary of the Board of State Charities when this legislation was passed, why it was felt to be necessary to establish such a power. The reply emphasized the fact that public opinion had been aroused on account of the increasing so-called charities, some of which were clearly rackets, and the local Chamber of Commerce was willing to take the initiative in an attempt to curb them. The act, requiring that suitable persons sponsor charitable work, carried the implication that the same was a public trust and that beyond the technical, legal wording, there should be read within the purview of the statute a social interpretation also. A court sitting in jurisdiction on an appeal in case of refusal to grant a charter would not necessarily take this attitude. The mood of the tribunal enters into the situation.

Since 1910, in the case of every petition for a charitable charter, the routine course of (1) investigation before the granting of a charter, (2) the requirement of advertising once in each of three successive weeks the date of the hearing to be held before the Commissioner, and (3)

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the holding of a public hearing presided over by the Commissioner of Public Welfare, who subsequently makes his recommendation to the Secretary of the Commonwealth, either for the granting or withholding of a charitable charter, has obtained.

In 1916, when the State Constitution of Massachusetts was revamped, an article, which was later adopted by the citizens, reduced the number of state departments to twenty. After the passing of what was known as a consolidating statute, effective as of December 1, 1919, the whole system of public charities was reorganized to be known as a State Department of Public Welfare under a single Commissioner. Included as one of the five divisions was one classified as a Sub-division of Incorporated Private Charities. Since that date there has been no change in the statutory supervisory power over private social agencies with the exception of a law¹ requiring foreign charitable corporations to report annually and another² which provides that in addition to charitable corporations, incorporated or unincorporated trustees who hold in trust within the state property given for benevolent purposes shall submit an annual financial report³ to the State Department of Public Welfare.

1. Idem, Chapter 180, section 12A.

2. Idem, Chapter 68, section 15.

3. Probate accounts may be substituted.

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1. Ibid., Chapter 190, section 12A.
 2. Ibid., Chapter 52, section 15.
 3. Probate accounts may be audited.

Gore describes a charitable trust as a public trust in opposition to the private trust, which is one for the benefit of individuals:

"A charitable purpose in the legal sense includes not only the relief of poverty, but religious and educational purposes, and such other purposes beneficial to the public as are sufficiently analagous to these. Trustees will hold property upon trust not simply for members as individuals, for in that case each member would insist upon a division--but upon trust for the members as members of the society--to be used and applied for its objects and in accordance with its rules. In practice the result of this arrangement hardly differs from the holding of property by a corporate body; for the society's property, in the hands of its trustees, will be liable on principle to the debts and obligations incurred on behalf of the Society by its officers and will be subject to such control by the society or its governing body. We have here a 'purpose trust' and something more. The purpose for which the society exists is one which falls under the legal category of charity. The flexibility of the law of trusts and the freedom of association have made possible the dedication of property to purposes which outlive the individual and may in a broad sense be called public; i.e., under the special legislation of the state, but the property is not state property."¹

It is to the type of charitable trust here described that the 1931 statute, requiring unincorporated trustees to render an annual statement, is applicable.

Because many corporations created under General Laws, Chapter 180, section 2, report neither to the State Department of Public Welfare nor to any other authority, the Commissioner of Corporations has several times filed a bill²

1. Property; Its Rights and Duties, pp. 218-220.

2. 1939 bill, House #366; if enacted, section 26A of G.L., Chapter 180, inserted by Chapter 236, Acts of 1933, would be repealed.

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1. Property; see Hight and Butler, pp. 218-220.

2. 1939 bill, House #306; if enacted, section 25A of G.L., Chapter 180, inserted by Chapter 286, Acts of 1933, would be repealed.

to require every corporation established under Chapter 180, or by special act for similar purposes, to file in January of each year a written report with certain required information: "if that same is found to be in proper form, it shall be certified for filing upon payment of a filing fee of \$2.00". This is probably desired because many petitions filed under Chapter 180 are found, upon investigation, not to consist of a purely charitable purpose. Nevertheless, charters are granted, even though the main intent is social, educational, civic, or religious and it is thought there should be some relationship to the Commonwealth for checking-up purposes. The bill would also mean additional revenue; it has however always failed of passage.

In order to test the claim commonly made that the system whereby public supervision of private charities is peculiar to Massachusetts, a fair sampling of the situation that holds in other states was made through inquiries of several state welfare departments. The following digests¹ reveal the system as it is worked out in some places:

California: Here it is necessary for any groups engaging in charitable purposes to file Articles of Incorporation with the Secretary of State. According to the type of work, there may be certain contact and supervision by the Secretary of State. A section of the Civil Code provides that a group which holds trust funds may have an accounting demanded by the Attorney General, as well as a report on their handling, at any time.

1. In substance a transcription of the information as received.

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In the matter of educational organizations, these groups file regularly with the Superintendent of Public Instruction the number, names, addresses and so forth of persons to whom degrees are given.

Divisions of state government, such as health, education and welfare maintain such follow-up supervision as is necessary according to the rules of their own departments.

In the case of all institutions or private homes in which children or aged are cared for, supervision is mandatory and it is anticipated that next year there will be legislation regarding the establishment of solvency, particularly in the homes for aged where life care contracts have been entered into. Such duty would rest with the Insurance Commissioner, with an agreement between the two Departments for the service to be rendered.

Indiana: This reply refers to Section 22-2407, Burns 1933 (Supp.) and states that the Department of Public Welfare shall provide general regulations for the conduct and licensing of maternity hospitals, boarding-houses for infants and children and for the business of placing infants. These licenses, for cause, may be revoked and any person, firm, corporation or association whose license is so revoked may appeal from the action of the Department of Public Welfare to the Circuit or Superior Court.

Section 5 (b) of the Welfare Act of 1936 provides that the Department shall supervise the operation of all agencies and institutions caring for dependent or mentally or physically handicapped or aged adults, including the approval of the incorporation of charitable agencies and the supervision of such other welfare activities or services as may be vested in it by law.

Section 9-2822, Burns Indiana Statutes, 1933, provides that in the case of the incorporation of any child-caring agency, the Department must certify that the incorporators are reputable persons; that the proposed work is needed; that incorporation of the proposed association is desirable and for the public good, before the articles of incorporation may be issued. The law also provides that child-caring agencies, maternity homes and boarding homes for children must make annual reports and be subject to inspection by the State Department of Public Welfare.

New Jersey: In this state a group of persons desiring to incorporate for "charitable and eleemosynary purposes"

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New Jersey: In this state a group of persons desiring to incorporate for "charitable and eleemosynary purposes"

must first have the signature of the approval of the Commissioner of the Department of Institutions and Agencies, before it can be accepted and filed by the Secretary of State. It is felt to be unfortunate that if such organizations fail to live up to their specified purposes, there is no power within the Department to do anything about this, unless the violation should be of such a grave nature that the matter could be taken to court. No financial reporting is required and no annual reporting.

Religious and fraternal organizations incorporated for the benefit of their own members are exempt from approval by the Commissioner of the Department.

The procedure, on receipt of an application for approval of incorporation, is as follows: the papers may first go to the Department. Sometimes they are submitted to the Secretary of State, who refers them to the Department and who will not act until they have been reviewed by that source. If the word charitable appears, he is sure so to refer. The major purpose must be charitable. If considered "charitable--non-profit", a questionnaire is sent out which aims to secure further information in regard to purpose, background and financial competence to effect the purposes for which they propose to incorporate.

In certain instances the persons are called in,¹ in order that purposes may be discussed and thereby there is cooperation resulting often in modification of intent, so that the social needs of the community may be better met. Sometimes the whole structure of organization is revised and ultimately, if there is approval, they are eligible for filing with the Secretary of State and in the County Court.

In still other instances, an individual field investigation in relation to a proposal is made, or a responsible individual in the community in which the group is to function may be asked to do this.

Pennsylvania: There is supervision of all agencies and institutions giving care to children outside of their own homes. Such an organization does not have to receive a state charter nor be licensed by the Commonwealth. If there are charters of incorporation, they can be approved by the Department and after application for such approval, the groups are subject to the rules and regulations governing their incorporation.

1. Suggests the procedure in New York under the Membership Corporations Law.

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A review of the above replies, and others, would seem to strengthen the conclusion that other states have not set up a division, which, in the matter of investigating petitions for the issue of charitable charters renders experienced social service and which upholds a social interpretation as within the purview of the charitable statute. Indiana and New Jersey are noticeably approaching this ideal. The rule holds that many states demand strict supervision in the case of children's agencies or institutions housing the aged, but not for all groups purporting to carry out a charitable purpose.

In summary, the different successive periods have been pointed out by which charitable groups in Massachusetts, upon receiving a charter, would appear to have undertaken a public trust. It has been shown that public policy favored the growth of reputable, private charitable groups, under a state supervisory power, rather than an extension of the subsidy system. Contrasting methods in certain other areas have been reproduced, an analysis of which strengthens the opinion that the Massachusetts system of supervision of private charities is outstanding in the protection it affords the community. In the following chapter, after defining "corporation" legally, we shall scrutinize the statutory proceedings by which a charitable corporation is established in the Commonwealth.

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Chapter IV

The Mechanics of Charitable Corporations

Business, religious, social and economic life proceeds increasingly on wings of corporate activity...

Incorporation gives the social agency legal standing and, in the pleasing legal fiction, a "personality"
Elwood Street

What is a corporation, legally defined? The honor of inventing corporations perhaps belongs to the Romans. According to Plutarch, they were introduced by Numa who found it necessary to divide Sabines and Romans into many subdivisions or corporations.¹ They were called universitates, as forming one whole out of many individuals. Corporations were also adopted by the canon law, for the maintenance of ecclesiastical discipline and this is the origin of religious corporations. By the civil law they seem to have been created by the mere act and voluntary association of their members, provided such union were not contrary to law.

Corporations may be divided into aggregate and sole.² The former consist of many persons united into one society and they are kept up by a perpetual succession of members which provides for endless continuity; as of this kind might

1. Second legendary king of Rome, 715-672 B.C.

2. Blackstone: Commentaries, Book I, Chapter on Corporations.

The Mechanics of Charitable Corporations

Business, religious, social and economic life proceeds increasingly on wings of corporate activity....
Incorporation gives the social agency legal standing and, in the pleasing legal fiction, a "personality".....
Elwood Street

What is a corporation, legally defined? The honor of

inventing corporations perhaps belongs to the Romans, accord-

ing to Plinius, they were introduced by Numa who found it

necessary to divide Sabines and Romans into many subdivisions or corporations.¹ They were called *universitates*, as forming

one whole out of many individuals. Corporations were also adopted by the canon law, for the maintenance of ecclesiasti-

cal discipline and this is the origin of religious corpora-

tions. By the civil law they seem to have been created by

the mere act and voluntary association of their members,

provided such union were not contrary to law.

Corporations may be divided into aggregate and sole.²

The former consist of many persons united into one society

and they are kept up by a perpetual succession of members

which provides for endless continuity; as of this kind might

1. Second legendary king of Rome, 753-715 B.C.

2. Blackstone: Commentaries, Book I, Chapter on Corporations.

be considered a mayor and the officers of a city, the president and fellows of a college, or the dean and chapter of a cathedral church. A corporation sole consists of "only one person and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had". A king is a corporation sole, so is a bishop or a parson. In effect, a parson may never die, any more than a king, since the law by making him and his successors a corporation, provides that the original rights of church property are preserved for incumbent and successors, just as they had been for the predecessors centuries before. In law all of these are one and the same person.

Another division of corporations is into ecclesiastical and lay. The former have to do with things spiritual and the latter include civil and eleemosynary, or charitable, groups which are set up for the perpetual dispensing of the funds of the founders to such beneficiaries as they have directed. A non-profit hospital would come under this class.

In England the king's consent was absolutely necessary to the erection of a corporation, either by implication or expressly given.¹ In the case of the first, the king himself,

1. Blackstone: Op. cit. p. 468 passim.

be considered a mayor and the officers of a city, the president and fellows of a college, or the dean and chapter of a cathedral church. A corporation sole consists of "only one person and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had". A king is a corporation sole, so is a bishop or a person. In effect, a person may never die, any more than a king, since the law by making him and his successors a corporation, provides that the original rights of church property are preserved for incumbent and successors, just as they had been for the predecessors centuries before. In law all of these are one and the same person.

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bishops, parsons, church wardens and others whose incorporation is inseparably annexed to their offices through custom or common law, must be thought of simultaneously with the idea of a corporation, capable of transmitting their rights to successors. Another example of incorporation by implication is that of the City of London and others, "time whereof the memory of man runneth not to the contrary". Express consent was given either by Act of Parliament or by a charter, in both of which cases the king's approval was necessary.

In colonial times a limited number of corporations were created by the king, or by the governors representing the crown. The charter granted to the Massachusetts Bay Company included the delegation of the royal right to create corporations.¹ This was seldom used, the only recorded instance being the granting of a charter to Harvard College in 1650. It is significant that this act was named as one of the Acts of Usurpation for which the Massachusetts Bay Colony had its charter declared forfeited by the English High Court of Chancery in 1684.

Corporations, public and private, were created by the provincial legislature under the Province Charter (1691-1780), subject to royal approval. In this period,² only one was

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The Constitution of the Commonwealth of Massachusetts was adopted in 1780 and from that date to 1800, the Great and General Court chartered just short of one hundred private corporations, many of them bridge and turnpike companies, as well as some that were charitable. The Massachusetts Charitable Society, incorporated 1779-1780, it is interesting to note, was declared not charitable in the legal sense, January 1939, when the courts ordered its income taxable.¹ Others of the same period are:

Scots Charitable Society (1657) incorporated 1786
 Massachusetts Charitable Fire Society incorporated 1794
 Roxbury Charitable Society incorporated 1799
 Boston Dispensary (1796) incorporated 1801

Incorporation by general law in Massachusetts was first permitted under the Statutes of 1851, section 133, which provided for the incorporation of manufacturing, mechanical, mining and quarrying companies, but stipulated that this power did not extend to groups manufacturing intoxicating liquors! The Statutes of 1857, Chapter 56, section 1, included charitable and other purposes.

In the case of Dartmouth College v. Woodward, Chief

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Justice Marshall established the following definition, which is comprehensive and also has a realistic tinge:¹

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession, with these qualities and capacities, that corporations were invented and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being."

This description might be translated into:

"The capacity to exist and to act, within the powers granted, as a legal entity apart from the individuals who compose its members; and this is the characteristic which distinguishes a corporation from other associations".²

In the case of Massachusetts, at least seven persons, four of whom are resident within the Commonwealth,³ are

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necessary to petition for the issue of a charter to a charitable corporation.¹ The petitioners first meet in agreement of association stating that they associate with the intention of forming a corporation. This agreement sets forth the corporate title to be assumed² and the location of the principal office, as well as the purpose for which the corporation is to be formed. The provisions for the internal government and regulations for the carrying out of the purposes are made effective by the adoption of bylaws. The framework of these should include such headings as name, object, types of membership, boards of directors described as to qualifications, election, term of office and duties; meetings both regular, special and annual; officers with duties, standing and special committees, quorum, fiscal year and provision for amendment. The subscribers to the agreement, with their addresses, are the persons calling the first meeting of the incorporators. Notice for this is often waived. At such meeting there is election of a chairman, election by ballot of a temporary clerk and his swearing in, the reading of the agreement of association, a formal vote to organize under the charitable statute, a vote upon the

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name and location, election of a board of directors, election of a treasurer and the election of a clerk, who must take an oath and attest the records. The first meeting of the directors may be held immediately after the first meeting of the incorporators.

The next step in the formation of a charitable corporation is the preparation of the articles of organization, which must set forth a true copy of the agreement of association and the names of the subscribers thereto or, if the incorporation is by special act of the legislature, a copy of the act of incorporation, the date of the first meeting and the name and post office address of each of the officers. The agreement and the articles, as well as the bylaws, must be submitted at the office of the Commissioner of Corporations. Upon approval by that office and the payment of the charter fee of \$25.00 to the Secretary of the Commonwealth,¹ in whose office the articles are filed, there is a statutory requirement to send the petition to the Department of Public Welfare, if the purposes appear to be charitable, for investigation.² Although the statute restricts the investigation to suitability, financial ability and other material facts pertinent to the petition, it has been the policy of the

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After there has been transmission of the charter purpose to the State Department of Public Welfare, the latter imposes certain technical details in requesting the return of a list of the petitioners with their addresses, both home and business, together with those of a wife or husband. There is the notice to advertise the legal hearing for three different weeks and a request for an attested copy of the bylaws. An affidavit of publication must be executed and returned at the proper time. A police investigation is carried out from the Secretary of State's office in all cases of charitable petitions,¹ and a court record usually means that a petitioner may not be classified as "suitable".

Before the day of the legal hearing, which is generally about four weeks distant from the time when the above-cited requests are made, supervisors from the Sub-Division of Incorporated Private Charities are assigned the task of the investigation. There is a case work approach to determine the suitability of the petitioners to carry out a public trust and also as to their financial ability. There is a study also as to the need of the proposed incorporation, as to whether it will mean duplication of similar, success-

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fully established work, whether the expressed need would appear to be one felt by the community, as to whether the purpose is bona fide charitable or inclines to a personal and perhaps business intent, and of any other material facts relative to the obligations that a public trust imposes. It has often happened that the set-up, which should be impersonal, objective and free from taint of selfishness is far from charitable and suggestive rather of family or commercial interest. It has been true, also, that an association having failed as a business, has tried to convince the Commonwealth that it should be declared charitable. Needless to say, such a cry is not countenanced. It has happened that during the process of the investigation, the petitioners themselves have come to realize that their purpose falls short of social content and they are willing either to withdraw the petition or to modify it. It is this interplay of helpfulness plus a spirit of mutual confidence and respect that has helped to place many of the hundreds of charitable corporations in Massachusetts on a high plane.¹

After the hearing, which the officers are required to attend and at which there may be opposition or support from any interested persons, the Commissioner of Public Welfare makes his recommendation to the Secretary of State. Provided a charter is granted, there are still other statutory

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requirements with which there shall be compliance. An annual financial statement must be returned by November first of each year and if an association is delinquent in this for two successive years, there may be dissolution through application to the Supreme Judicial Court.¹ Interest does not cease with the granting of a charter and from time to time through supervisors there are contacts with the corporations by meeting directors,² interviewing executive managers, or inspecting the activities, which may be carried on in institutions, clubs, homes, or other places.

Although the law, in case of refusal to grant a charter, permits appeal to the Superior Court, only four instances are known where this has happened. Three of these were withdrawn before the date set for the court hearing. In the fourth case there was a hearing before a Superior Court judge as a result of which the Secretary of State was notified to issue the charter.³

As corporations endure, it is sometimes felt that an appropriate name has not been chosen,⁴ or that a purpose

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2. A permissive power: G.L. (Ter.Ed.) Chapter 121, section 7.

3. Case #103852 Middlesex Superior Court: Charter was ordered granted on February 20, 1936 and revoked by the Secretary of State August 19, 1936 for violation of law under G.L., Chapter 180, section 26A, which presumption was clearly brought out in the course of the investigation and embodied in the report.

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should be changed.¹ There are blanks for carrying out these details, which may be procured from the Department of Corporations. It may result that the original enthusiasm has diminished, or social conditions may have changed so that the corporate purposes are obsolescent, and dissolution has been effected. It is not unusual that legacies may materialize to be handed over to a corporation that is no longer in existence. It is necessary in such a situation to petition the Supreme Judicial Court of the Commonwealth for application of cy pres.² This is sometimes called a doctrine of "approximation" which permits a court to deal with a trust, in which there is a general charitable purpose not capable of being administered according to its terms, in a manner as nearly like the original intention of the donors as possible. Since a gift for charitable purposes is for objects of permanent interest and benefit to the general public, it is permitted to be of continual duration and does not fall within the rule against perpetuities. The testator's general purpose must not be subverted and courts may not devote any portion of a fund dedicated to charitable uses to an object not contemplated by the donor. Courts shall act within and not beyond the benefactor's wishes. In any case, a general

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intent must be found before there can be application of the doctrine of cy pres. If there were, for example, a legacy to a needy boys' and girls' home and the institution had ceased to exist at the time of carrying out the provisions in the will, the court might direct that the trust be established in some other area or home that benefits children in need.

A recent case, involving the principles of the cy pres doctrine, was rendered an opinion by the Supreme Judicial Court of Massachusetts on February 28, 1939. The suit concerned a resulting charitable trust. In the action in contract, the plaintiff, who was the executrix of the testament of a residuary legatee sought to recover \$8,000 which had been bequeathed to the defendant, in a will allowed on September 30, 1913. The money had been for the erection of a Library Building in the Village of Hyannis and the \$8,000 was paid January 6, 1915, but the library never materialized. The opinion stated:

"The defendant is a public charitable corporation and the legacy is one for public, charitable uses¹ ... Charitable uses are favorites with courts of equity².....it has long been established that gifts to charitable uses will be sustained and where a literal execution may become impractical or inexpedient in part or even in whole....(they) will be carried into effect so as to accomplish the general purpose of the donor, as nearly as circumstances will permit, and as such general, charitable intent can be ascertained.....

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from this view of the law governing gifts in trust to charitable uses, it is manifest that no neglect, misapplication of funds, or other breach of trust, will give a right to the heirs at law to call upon a court of equity to declare a resulting trust for themselves."¹

The court further said that even in cases of such neglect or breach of trust, the heirs could not recover in an action of law for their own use funds so dedicated to charitable purposes, for "it is settled that it is the exclusive function² of the attorney general to enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof".

Since so many requirements must be followed through as collateral to the creation of a legal personality in matters charitable, one might well ask why incorporation is sought. Many reasons are obvious, as exemption from taxation if real estate is to be held,³ freedom from personal liability, the power to accept legacies and to hold property, the advantage of working as a legal entity, and escape from suits of tort. Permanency and continuity are provided as well as a sense of trustworthiness which is of help in solicitation for support. A foreign group, recently petitioning, has declared it wanted a charter so it could

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2. G.L. (Ter.Ed.) Chapter 12, section 8.

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"come under the wing of the State"!

This chapter has covered the several steps through which the social and legal instrument captioned as a private, charitable corporation must pass before it has the sanction of the Commonwealth to carry out charitable purposes that shall qualify legally, objectively, and in the interest of an indefinite number of beneficiaries. It will be recalled that the statute of 43 Elizabeth suggested the division of charitable uses into four areas. We shall turn in the following pages to the interpretation of these different classifications as certain cases before the Supreme Judicial Court have established them.

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Chapter V

Judicial Interpretations of Charitable, Civic, Educational and Religious Purposes

Neither the Constitution nor the Statutes has undertaken to give a definition of a charitable institution or corporation.....the definition of such a body will, therefore, be a task imposed upon the courts.

The Supreme Court of
The State of New York

The statement has often been made that perhaps there has never been an attempt since the days of Queen Elizabeth to define charity with such preciseness as did the 43d Parliament in her reign. In the statute of charitable uses there would appear to be the logical division into charitable, civic (called municipal then), educational and religious purposes. These four fields are just as distinct several hundred years later and it is interesting to note some decisions of the state courts as to whether civic, educational and religious bodies fall within the scope of the term "charitable". Speaking very vaguely, charitable corporations are those that are obligated to render an annual financial statement to the State Department of Public Welfare. Should organizations with civic, educational and religious purposes be compelled to do this?

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We shall note several opinions relating to these areas
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definitions of charity.

While there is no question of the propriety of making charitable gifts, a definition of charity is not easily ascertained. In a broad sense, it might denote the good will which men bear toward one another and in its narrowest sense it might mean merely relief to the poor. Legally, however, its meaning is not confined to poor relief, as some of the later examples in this chapter will show, and the legal opinion takes in the wider intention of good will and whatever adds to the happiness and advancement of one's fellow man. While a definition is valuable, the historical development should be kept in mind. Since the passage of the Elizabethan Statute, charities have had a somewhat technical meaning, but there has also come to be a sort of descriptive tone or feeling-awareness in several of the court opinions. Many trusts have been sustained as similar in general principles to the enumerations in the Statute; however, as early as 1833, the list had grown from twenty-one to forty-six.

Horace Binney, in arguing his case in support of the Girard will in 1844,¹ said that whatever was given for the love of God or for the love of your neighbor in the Catholic and universal sense was true charity and that all bequests are charities in so far as they are without consideration. Binney also states charity must be free from stain or taint

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of every consideration that is personal, private or selfish. This definition has been criticized as being too exclusive and the question is naturally raised as to whether acts of charity are always free from thought of selfishness. The effect of a gift, rather than its motive, determines its legal character.

The courts are inclined to be liberal in their attitude toward charitable uses.¹ Lord Camden in 1767 indicated that men of wealth are not excluded from being beneficiaries under a charity and that anything that aided the community as a whole without regard to social rank or pecuniary condition of its members might be a charity.² Sir William Grant, Master of the Rolls, in 1804 wrote in the case of *Morice v. Bishop of Durham*, "Those purposes are considered charitable which the Statute of Elizabeth enumerates or which by analogies are deemed within its spirit and intendment". Justice Gray's definition referred to the four classifications as set off in 43 Elizabeth,³ adding that the conditions must conform to law, that there must be indefinite-

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More definitely, he said:

"A charity in the legal sense, may be more fully defined as a gift, to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."

This would appear to be a generalization of the law of charitable uses and attorneys acknowledge it to be the classic and most often quoted. Other definitions are those of Swayne,¹ Pomeroy² and Perry.³

Swayne: A charity, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man.

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Perry: Charitable trusts include all gifts in trust for religious and educational purposes in their ever-varying diversity; all gifts for the relief and comfort of the poor, the sick and the afflicted; and all of the gifts for the public convenience, benefit, utility and ornament, in whatever manner the donor desires to have them applied.

There are some groups established to carry out charitable purposes whose intent, if accomplished objectively by reputable boards and in accordance with the powers delineated

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In 1872 there was a case¹ listed as Gooch v. Association for the Relief of Aged Indigent Females.² This refers to a corporation established in 1849 for the support of poor and elderly women, for which there was no source of profit, although the payment of a sum of money was necessary at the time of admission. The plaintiff was an inmate of the Home from 1863 to October 1868, when she was expelled for disobedience to the rules. She had paid \$240 when she entered. It was claimed by the defense, which was upheld, that a person entered under whatever rules of conduct and management the matron was bound to enforce and that the woman could not maintain action to recover damages for her removal from a room orally assigned. Even though there had been no written notice of removal and although the managers may have been actuated by malice, it was found no damages could be recovered. In the opinion rendered, the following statements were included: "The charitable nature of a gift is not

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In 1878 there was a case¹ listed as *Good v. Association for the Relief of Aged Indigent Females*.² This refers to a corporation established in 1848 for the support of poor and elderly women, for which there was no source of profit, although the payment of a sum of money was necessary at the time of admission. The plaintiff was an inmate of the Home from 1855 to October 1888, when she was expelled for disobedience to the rules. She had paid \$240 when she entered. It was claimed by the defense, which was upheld, that a person entered under whatever rules of conduct and management the matron was bound to enforce and that the woman could not maintain action to recover damages for her removal from a room orally assigned. Even though there had been no written notice of removal and although the managers may have been actuated by malice, it was found no damages could be recovered. In the opinion rendered, the following statements were included: "The charitable nature of a gift is not

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necessarily affected by the fact that the institution which is to administer it does not extend its services free to all the members of its class of beneficiaries...The circumstance that the use of the property is free, is not a necessary element in determining whether the use is public or not....If the use is of such a nature as concerns the public, and the right to its enjoyment is open to the public upon equal terms, the use will be public whether compensation be exacted or not....Furnishing board, lodging and nursing to needy persons is among the most familiar and useful of charities, and that which constitutes such an institution a charity is that it does not furnish these things for profit".

What is the attitude of the Massachusetts courts toward a gift for educational purposes?¹ A case in point is the *Second Religious Society of Boxford v. Daniel F. Harriman*. A testator by will had given \$1500 to a parish to build and support a public school for the education of children "as the law now directs". The same was to be located near a certain meeting house as land could be purchased there reasonably. In 1864 the parish, by vote, accepted the gift naming trustees with "A" as Chairman. In 1865, without leave of the court, a vote was again taken by the parish to relinquish the trust fund to the nearest school district. It was accepted and a committee was named to accept the gift, its

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In the case of a School for the Deaf, which had refused to send annual financial statements to the Department, on the claim that the work was educational and not charitable, it was decided that the primary object was not so much the "dissemination of learning in the community as it is the restoration to competent citizenship of a well recognized class of defectives that would otherwise constitute a heavy burden on the public....

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Education, next to religion, has generally been described as one of the best means of human betterment.¹ The general reasoning is that it "has opened to the beneficiary the best thoughts of the best minds, that it gives a broader outlook on life, that it puts before scientists the experience of their predecessors and has enabled the physician to study reasons for disease and their cure. It has dispelled superstition and ignorance."² It is not necessary that charity administer directly to physical wants. In the case cited above the point was brought out that "if education were necessary in the time of Elizabeth it is absolutely imperative now", since educational purposes are "not merely the means of instruction in grammar or mathematics, or arts, or sciences, but all that series of instruction and discipline which is intended to enlighten the understanding, purify the heart, elevate affections, inculcate generous and patriotic sentiments and help the rising generation in manners and habits".

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In the matter of determining whether an institution is charitable that is set up as a non-profit corporation, with a purpose that would appear to be civic and in the interest of good citizenship, let us look briefly at *Little v. Newburyport*, which was before the courts in 1912.¹ This was a case where the question arose as to whether or not a town had the right to tax Y.M.C.A. property.

The purpose of the organization was for the improvement of the spiritual, mental, social and physical condition of young men. No religious test was to be applied. Jews and those of no religious preference could enjoy the privileges. Poles had had special classes to help them to better conditions of living and men from factories had been entertained, all at no profit. The judge ruled that it would be impossible to lay down a general rule for Y.M.C.A.'s..... "Talks are given therein on hygiene, civics, government, history and on how to become good citizens....They are not almsgiving, but charity, in the legal sense, is not confined to mere almsgiving or the relief of poverty or distress, but has a wider significance, which embraces the improvement and promotion of the happiness of man".² They carry on a work "which is intended and adopted for the elevation of young men, not only to bring them under good influences, but to

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promote their moral, mental and physical welfare....They incur expense for this purpose, for meeting which they rely upon charitable contributions. The element of indefiniteness is, of course, essential to the character of a public charity, but the privileges of members are open to all on payment of a moderate fee".¹ The judgment was for the plaintiff and the decision included the following: "Where, in law, we speak of religious and charitable uses, we mean nothing more specific and technical than the pervading spirit of Christianity. We mean legal acts done for the promotion of piety among men, or for the purpose of relieving their sufferings, enlightening their ignorance, and bettering their condition". In the cases of Y.M.C.A. and Y.W.C.A. properties, these are generally exempted as public charities. In some instances, where a part of the property has been leased for commercial purposes, there is exemption only as to the balance.

In regard to religious organizations, the courts generally recognize that gifts can be made to narrowly denominational purposes and enforce that they be carried into effect. This not only applies to purely religious charities, but also to educational and eleemosynary gifts which involve a religious test. In a case containing information filed by

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the attorney general that certain funds, which should be in the hands of ministers and deacons of the Old South Church in Boston to be applied to the use of the poor in that church,¹ were being used by the Old South Society to defray its general and current expenses, it was stated that the funds were being misapplied and perverted, though they had been appropriated by will (Thomas Hubbard, 1773, to the Charitable and Pious Fund) toward a public charity. It was held that "a gift to the poor of a particular parish is a good public charity" and because the officers of the religious society had intermingled charity for the use of the poor with other funds held by them and had not used it according to the intention of the donor, redress against this abuse was found. It was further adjudged that a court of chancery will order a charitable fund to be paid to a corporation authorized by law to receive and hold it, without first prescribing a scheme for its application.

There have been many other famous cases in regard to judicial attitudes toward public charities. Two or three of these will be analyzed. One, in 1910, involved the right of a sanitarium to demand tax exemption from the town where it was resident.² In the argument advanced in the decision, which favored the health resort, the court said, "The con-

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trolling purpose is none the less charitable even if those who need no pecuniary aid are either directly or indirectly benefited. Every charity created for the gratuitous treatment and relief of disease, or the physical infirmities of the indigent, or for their education or religious training, helps and aids the community as a whole without regard to the social rank or pecuniary condition of its members....

A hospital and sanitarium which has attracted a large number of paying patients, some of whom use it merely as a health resort, but which also takes patients at reduced rates or gratuitously, and applies all its income to promote charity, is likewise a charity....A trust for the exclusive benefit of the least wealthy of a well-to-do or prosperous class could not be sustained as a charity....Nor will there be an apportionment of the classes of beneficiaries so that, if the number of paying patients preponderates, the exemption fails....Of course, where a statute requires the use of a certain proportion of beds for charity cases, the situation is different, and the hospital will not be exempt unless it fulfills the statutory requirements....That a large class of pay patients use a hospital merely as a sanitarium does not prevent exemption". The fact that such payments at times might have resulted in a surplus would appear to be immaterial. Very definitely the town lost out in the assumption of its right to collect taxes from the charitable corporation.

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The second example again emphasizes liberal interpretations that are given to charitable corporations by the law. In the case of *McDonald v. Massachusetts General Hospital* there was affirmed the fact that a suit in tort may not be brought against a private charitable corporation.¹ A laborer injured in working about the hospital was placed in a free ward, but he refused the attention of a house pupil who had not yet been graduated from the medical school. The house surgeon who ordinarily would have set the fracture was necessarily absent from the hospital. Within a few days the patient, after some words, voluntarily left. It was held that even if his limb had not been properly set, the plaintiff was not entitled to recourse in the courts, since the hospital was a public charitable institution and all services had been gratuitous. If it could have been established that there was negligence on the part of the hospital, the person injured would have had no redress, for the same reason.² The Massachusetts Courts have said: "if the property of the charity was depleted by the payment of damages, its usefulness might

1. 120 Mass., 432; 1876.

2. There are those who believe that the will of an individual, charitable though it may be, should not be allowed to exempt property from the operation of the general laws of the land, the reasoning being that a person should be just before he is generous. The court attitude is that a charity has performed its whole duty for the benefit of members of the whole public and the right of an individual must be subordinated to the public good.

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be either impaired or wholly destroyed, the object of the founders or donors defeated and charitable gifts discouraged".¹

The situation that obtains in Massachusetts in the matter of torts in their relation to charitable corporations, it is important to note, is almost universally accepted in other states. For example, the Illinois Court has decided that an institution doing charitable work of benefit to the public and depending upon gifts for the accomplishment of its purpose is not "to be hampered in the acquisition of funds by diverting them to the different purpose of satisfying judgments because of the negligent act of an employee".² Maine has argued that unless charitable institutions are exempted, private gifts would not long be contributed "to feed the hungry maw of litigation".³ Pennsylvania has said, "How much better than a thief would be the law itself, were it to apply the trust's funds contributed for a charitable object, to pay for injuries resulting from the negligence of the trustees".⁴ The argument would appear to be that it is better for one employee to suffer

1. 1906, *Farrigan v. Pevear*, 193 Mass. 147, 149; other cases in point: *Zoulalian v. N.E. Sanitarium*, 230 Mass. 102, 105 and *Roosen v. Peter Bent Brigham Hospital*, 235 Mass. 66.

2. 1905, *Parks v. Northwestern University*, 218 Ill. 381, 385.

3. 1910, *Jensen v. Maine Eye and Ear Infirmary*, 107 Me. 408, 411.

4. 1888, *Fire Insurance Patrol v. Boyd*, 120 Pa. 624, 649.

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injury without compensation than that the public should be deprived of the benefits of the charity. Courts in Missouri have upheld that a full pay patient who has received a carbolic acid rub instead of one of alcohol is without remedy at law.¹ Similar views have been held in Maryland, Kentucky, Arkansas and Tennessee. Many states, however, make a distinction between the negligent employees of a charity and those employing them. North Carolina, for instance, believes that if the unskilled are employed "funds bestowed for benevolence are diverted from their true purpose and, under the form of a charity, they become a menace to those for whose benefit they are established."² Differences also prevail among the states in regard to liability in contracts if none exists in tort, injuries incurred in connection with buildings owned by charities but used for business, and the creation of nuisances.

The last case to be presented is Jackson v. Phillips in which heirs-at-law attempted to break a will in which the sum of \$10,000 had been left to a group of trustees to create a public sentiment to put an end to negro slavery and \$2,000 to aid necessitous persons of African descent in Boston and

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Until now the subject of charitable corporations has been developed with particular reference to the importance of the ancient statute of charitable uses and its deductions, both legal and social in Massachusetts. Also worthy of consideration are the zeal and vision of pioneers in the field of social welfare and their methods of performance. The concluding chapters describe some of the 19th century private charitable efforts as well as a few of the more modern trends in social service. Not unmindful that the corporation is the vehicle for carrying out charitable purposes, we shall emphasize in the following pages, nevertheless, more of the social implications and less of the legal theory than has been evident up to this point.

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Chapter VI

Nineteenth Century Charitable Organizations

Do we not find in numberless instances that charitable relief is the opposite of charity?.....Thomas Chalmers

In looking about for records concerning early charitable corporations in Massachusetts, the writer came upon sermons by several ministers, many of them dating back to the earliest decades of the 19th century and delivered as annual addresses to Female Charitable Societies. Some of these groups have endured to the present day and are carrying on active programs. One will find the president still called the "First Directoress" and the treasurer "a spinster over twenty-one years of age".¹ The societies boast that present officers and members are of the fourth generation from those who were founders. One might think these associations would have been absorbed into family welfare organizations or have developed into agencies more expressive of community needs, but tradition and a tendency to slowness against change have prevented.

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early 20th century, octogenarians were present who, as children, sat in at some of the meetings. Several persons who were too infirm to attend sent letters and it is into a few of these that we shall now look.

"How well I recall those scenes; a blazing fire, the members arriving at the hour of seven. I remember the earnest discussions as one or another name was proposed by a member, as to whether money or flannel (red, for some poor rheumatic) or cotton or calico, would best supply the need. After the business of the meeting was over, just a little innocent gossip was indulged in...In those days there was no railroad to the town, no telegraph anywhere, no foreign steamers, and probably only ten daily newspapers taken in the town. When the old church bell rang nine o'clock, the ladies departed for their homes. Reverend _____ would come a short time before adjournment, but there were few other escorts, as most of the husbands were on their way to or from the ends of the earth, so the ladies went together with the aid of a few lanterns."

Some of the rules of procedure follow:

Rule: The Society shall meet weekly for the purpose of reading such books as will be instructive and edifying.

Rule: To meet precisely at six o'clock. Commence with reading Scripture at seven.

Rule: To read in alphabetical order, each to read one-half hour, pausing at intervals for the purpose of making observations on the reading, work, etc. When there is a sermon read, it is desirable that the texts and heads should be repeated.

Rule: At the weekly meeting to devote one hour commencing precisely at six o'clock to the discussion of some religious subject, to be proposed by the members in alphabetical order.

Donations for the work were in money and goods for wearing apparel. They were usually listed in a book and one record reads: "a piece of tape and thread, value 13 cents". One woman gave 18 Divine Song Books; another,

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6 Mr. Worcester's Sermons; another, 6 Evangelical Primers. Cloth and yarn were given, handkerchiefs, and stockings "knit by myself"; sometimes garments were lent! One report recalls the queer dry goods of the day,--bombard gowns, pressed woolen, baize shirts, fustian, kerseys and denims. Doles of money were allotted, also pounds of yarn, cords of wood, hanks of thread, pinafores, primers for school use, spelling books, catechisms and Bibles. The distributing committees in their visits of inquiry and relief had to "delicately suggest such hints to the poor, and give such encouragements as may tend to advance industry, economy and neatness, in their respective families".

One letter writer, and it is fortunate for our present purpose that so many were too infirm to attend the centenaries, commenting on the need of the women's work, said,

"There was no lack of cases which called for help, and these ladies made it their concern that the help should be intelligently applied. There were the inharmonious families, where wise and timely intercession might possibly arrest the harm--there were the widows and orphans of the thrifty fishermen who had put out for the Grand Banks and never returned--there were the loathsome phases of drunkenness, squalor and filth--there was the familiar case of the common drunkard, well fed and clothed at the public expense while undergoing a term of penal restraint and at the same time punishing the innocent victims of his excess at home: his wife and children suffering for the stoppage of his earnings and turned over to the public charity. And then there were always the two kinds of want, to be discriminated by the closest observations,--the self-respecting poor who respond to efforts for their relief, and the chronic poor whose only instinct seems to be to live without work. To confound these two classes is the fatal error of all machine-made philanthropy, and to discriminate the one from the other often overtaxes the finest intelligence and the noblest purpose."

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In still another Female Charitable Society the object (1804) was stated "to relieve, instruct and educate in a manner suitable to their condition and situation in life poor and destitute female children and to assist aged and infirm widows, who through misfortune have fallen into poverty and distress." It held that every married woman belonging to that agency, "who shall with the consent of her husband receive any of the money or other property of said society shall thereby render her husband accountable to the Society". They had authority to take under care such poor destitute children as they judged "suitable objects of charity to enjoy the benefits of an institution or to be bound out in virtuous families until the age of eighteen". Even the clothing which the children had to wear as they marched off to church was meticulously described.

The bylaws of one organized in 1803 and chartered in 1805 outlines the interest in children as the following:

"The Board of Managers shall have the entire direction of the children committed to its patronage; shall provide for them a suitable governess; shall see that they be properly dieted, clothed and instructed; and, in all respects, exercise over them a maternal care; particularly in determining into what families they shall go, when of suitable age and improvement to be put out....The Governess shall board the children committed to her care by the Managers; and instruct them in reading, writing and sewing, with the various branches of domestic work. She shall pay particular attention to preserve them from vice and temptation, to cultivate their morals, to instruct them in the principles of religion, and allure them to its practice. On the Sabbath, she shall conduct them to the House of God; and when requested, make report of their conduct and improvement to the Managers; the children shall be

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This suggests a children's charter with the children left out!

A clergyman delivering a sermon in 1804 to a Female Charitable Society, which evidently had some of the beneficiaries also present, admonished: "If ever you have to elect another governess for these children, you should religiously adhere to the plan you have so judiciously adopted: and let your choice fall on one who will make it a first and capital object to cultivate their hearts; to train them to virtue and piety.....My heart irresistibly constrains me to address a word to the little ones I see before me. Highly favored children that you are to engage the piety and exertions of such generous friends, you will ever remember, we trust, your obligations to be all that they would wish you. How ungrateful would you be, should you ever forget their kindness, or misimprove it!" The age range for the children under the care of this group was from six to ten years!

The above examples testify to the rigidity and narrowness of the code under which one type of early 19th century groups was managed. Perhaps a timely statement is that they should not be looked at askance for carrying on as they did one hundred and thirty years ago, as that their successors

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The earnest and sincere effort of the pioneers is not to be doubted and perhaps their zeal should be stressed more and their weaknesses less. It should be added, too, that not all groups have remained in the same narrow channel. Some have gone out of existence and others have thrown their funds over to societies practicing modern methods.

Striking observations with reference to the pioneering relief groups in the 19th century are the tie-up with the religious and virtuous organizations, the inevitable linking of reform to social service and the positiveness with which the benefactors spoke. One leader wrote, "We have set ourselves to strengthen such as do stand, to comfort and to help the weak-hearted and to raise up those who fall, and to have found out how this is to be done, is to have taken one

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Toward the close of the century, charitable corporations would seem to have taken on more of a differentiation of purpose.³ As another reward for research, there came to view an address delivered by Rev. William Tilden on the occasion of the quarterly charity sermon at the Hollis Street Church in Boston on December 1, 1880. In it he noted that in his preparation he had come upon a book entitled "A Directory of the Charitable and Beneficent Organizations of Boston", prepared and published by the Associated Charities of Boston as a part of their work of bringing charitable

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1. Lowell: Public Relief and Private Charities, preface, 1884.
 2. Louisa Lee Schuyler, N.Y. State Charities Aid Association.
 3. Corporate titles have also generally changed to drop such terms as Dorcas, Bethesda, Bethany, Mission for the Poor, Asylum for Discharged Female Prisoners and Refuges for Fallen and Penitent Women.

step, at least, toward success".¹ Another, writing a little earlier, said that the poor should be elevated in their homes, that relief should aim at the permanent improvement of the relieved, that there must be always the tendency to elevate and never to pauperize, "...when sewing was to be given out, it was to be conditional on the neatness of the person, the rooms and the children!"² This suggests an old teaching of the Boston Provident Association, "never to take advantage as an evidence of want, or neatness as an evidence of plenty".

Toward the close of the century, charitable corporations would seem to have taken on more of a differentiation of purpose.³ As another reward for research, there came to view an address delivered by Rev. William Tilden on the occasion of the quarterly charity sermon at the Hollis Street Church in Boston on December 1, 1880. In it he noted that in his preparation he had come upon a book entitled "A Directory of the Charitable and Beneficent Organizations of Boston", prepared and published by the Associated Charities of Boston as a part of their work of bringing charitable

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1. Lowell: Public Relief and Private Charities, preface, 1884.
 2. Louis Lee Schuyler, N.Y. State Charities Aid Association.
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organizations into relations of closer cooperation and especially of aiding citizens to use the agencies more readily. The clergyman stated in his sermon that the directory above mentioned divided the agencies into classes and he recited them as follows:

Class First - Industrial

The Industrial Aid Society, the Boston Industrial Home, the Y.M.C.A. and the Y.M.C.U. (80 of these)

Class Second - Government Aid

Twenty-five different ministries of aid are registered, although several in this class, such as the Public Schools and Public Library, are educational rather than charitable

Class Third - Relief Irrespective of Class

This deals with such as the Fragment Society, the Howard Benevolent Society, North Street Union Mission for the Poor, St. Joseph's Home for Sick and Destitute Servant Girls (over 30 included)

Class Fourth - Relief for Special Classes

Harris Fund for the Blind, Police Charitable Fund, Seamen's Friend Society and other groups as musicians, policemen, soldiers, widows, physicians, clergy, theologians, students (between 50 and 60)

Class Fifth - Aid for Foreigners

Germans, French, English, Scotch, Welsh, Swiss, Belgians, Hollanders, Israelites, Italians, Portuguese, Scandinavians (13)

Class Twelfth - Education and Religious

All beneficent institutions--schools of all sorts, day and evening--libraries, reading rooms, institutes, colleges, universities, churches, chapels, missionary tracts, Bible societies and the like

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Twenty-five different ministries of aid are registered, although several in this class, such as the Public Schools and Public Library, are educational rather than charitable

Class Third - Relief Irrespective of Class

This deals with such as the Truancy Society, the Howard Benevolent Society, North Street Union Mission for the Poor, St. Joseph's Home for Sick and Destitute Servant Girls (over 30 included)

Class Fourth - Relief for Special Classes

Harris Fund for the Blind, Police Charitable Fund, Seamen's Friend Society and other groups as musicians, policemen, soldiers, widows, physicians, clergy, theologians, students (between 30 and 60)

Class Fifth - Aid for Foreigners

German, French, English, Scotch, Welsh, Swiss, Belgians, Hollanders, Italians, Portuguese, Scandinavians (13)

Class Sixth - Sick and Defectives

Ambulance service, Free Nurses, Rides for the Sick, Hospital Newspaper Society, the City Hospitals for men, women, children, seamen, servant girls, deaf, dumb, blind and feeble-minded, for diseases as Consumptives' Home, the Spinal Home, the Nervine Asylum, the Small Pox Hospital, the North and South End Diet Kitchens (170)

Class Seventh - Fruit and Flower Missions

Two

Class Eighth - Homes

City Homes for the Poor, homes for the unfortunate established by individual benefactors (75)

Class Ninth - Reform

House of Industry, Society for Aiding Discharged Convicts, Reformatory Prison for Women, Asylum for Discharged Female Prisoners, Institutions for the Rescue of Fallen Women, Homes for Boys "who have been sentenced for petty offenses, or who are paupers, where they may be educated and taught to work", Temperance Societies, open and secret homes for intemperate men and women, too.

Class Tenth - Humane

S.P.C.C., S.P.C.A., Recovery of lost or stolen children, Saving Life, Public Health embracing all sanitary regulations and effort

Class Eleventh - Mutual Benefits

Mutual benefit societies, equity unions, cooperative stores, homestead savings funds, loans, savings banks, Masonic, Odd Fellows, Temperance Orders, all special societies as Post-Office and East Boston Ferry Men

Class Twelfth - Education and Religious

All beneficent institutions--schools of all sorts, day and evening--libraries, reading rooms, institutes, colleges, universities, churches, chapels, missionary tracts, Bible societies and the like

tracts, Bible societies and the like
colleges, universities, churches, chapels, missionary
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All benevolent institutions--schools of all sorts,

Class Twelfth - Education and Religion

Petty Men
special societies as Post-Office and East Boston
banks, Masonic, Odd Fellows, Temperance Orders, all
live stores, homebased savings funds, loans, savings
Mutual benefit societies, equity unions, coopera-

Class Eleventh - Mutual Benefits

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S.P.C.K., S.P.C.A., Recovery of lost or stolen chil-

Class Tenth - Humans

for temperate men-and women, too.
work", Temperance Societies, open and secret homes
paupers, whose they may be educated and taught to
been sentenced for petty offenses, or who are
House of Fallen Women, Homes for Boys "who have
Discharged Female Prisoners, Institutions for the
Convicts, Reformatory Prison for Women, Asylum for
House of Industry, Society for Aiding Discharged

Class Ninth - Reform

established by individual benefactors
City Homes for the poor, homes for the unfortunate
(VS)

Class Eighth - Homes

Two

Class Seventh - Fruit and Flower Missions

and Diet Kitchens
Asylum, the Small Pox Hospital, the North and South
Consumptives' Home, the Spinal Home, the Nervine
dumb, blind and feeble-minded, for diseases as
men, women, children, seamen, servant girls, deaf,
Hospital Newspaper Society, the City Hospitals for
Ambulance service, Free Nurses, Hides for the Sick,
(150)

Class Sixth - Sick and Defectives

Dr. Tilden concluded that in all he counted 285 different types (we make it considerably over that), but he was surprised to find that the quarterly charity lecture,¹ perhaps the oldest institution of them all, was not included! He added, "I doubt if there be another city on the face of the earth where more is done for the relief of want and where aids to industry and virtue are more abundant, or used with more earnest desire to have them felt for human weal".

Selecting only one more form of organization, the seamen's, listed in the 1879 Directory of Social Agencies, we find there the same tie-up with religious auspices, which characterized so many of the early agencies. While today such organizations are non-sectarian, in most groups the support is still from church auxiliaries. There are about seven in Boston serving seamen today and these have their roots in the philosophy of reform in consideration of aid received. Where there are homes or shelters for the seamen, the programs usually follow the same routine, which is not unlike the objectives in the early years. Religious services are held on Sundays and generally during the mid-week. Light refreshments, as doughnuts or sandwiches, and coffee are served. There is usually a game room, storage

1. The first recorded one is for the year 1720 by Rev. Cotton Mather.

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facilities, opportunity for sending and receiving mail, a chapel and a library. The executive director is often a man of experience, with a technique leaning toward the emotional, who furnishes counsel and moral support, but who has no knowledge of the skills that aid the client in organizing his own impulses. One or two shelters will furnish meals and all of them lodgings upon payment of a small fee. Sometimes a service is maintained whereby bundles of literature are distributed to men on the ships in the harbor. During these visitations work is sometimes found for an unemployed seaman.

The charter purposes of these groups, some dating back to 1829, carry the same implication that many charitable corporations of that period do: "improving the moral, religious and general condition of seamen and their families"; or, another states, "ministering to seamen by employing such means for their spiritual and temporal welfare as may be deemed advisable by the society"; another was established "to improve the morale, relief and general condition of the seamen". Some of them have racial restrictions and in such there is the added interest of service to the immigrants. One shelter used to have two hundred or more newcomers passing through its doors in a single day, for a brief respite before moving to new homes in the west, but recently it has had to close the house because practically all immigrant patronage had ceased on account of restricted

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quotas.

From a recent survey of seamen's agencies,¹ the impression is gained that several of these corporations have outlived their usefulness. Many of them own or occupy considerable real estate and in the case of one or two there are heavy endowments. Duplication of work is apparent and reduced registration testifies to the regression of the Port of Boston. Perhaps it is a thought not so much within the seamen's groups themselves as from foreign consuls and social workers with vision that there should be one large seamen's union along the waterfront, which might have a more practical welfare program than would appear to have been the purpose when the havens were repeatedly coping with drunkenness and vice. In such an amalgamation there could be improved services for dealing with the relief or other personal problems of individual seamen as well as recreational programs to attract the younger man. In coordination there could be extension of the ship-visitation, with assured coverage and less duplication. The individualized service in the case of hospitalized seamen or those needing out-patient medical or dental services could be more effectively carried out, thus minimizing neglect and furnishing better opportunity for personal counselling. An employment service might be maintained and personnel for carrying out specialized programs

1. Compiled by the Boston Council of Social Agencies, August, 1938.

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could be better chosen and supervised. Some of the havens as now conducted furnish a job for the emotionally endowed superintendent and hardly more. In the proposed union there might be a lessening of the denominational or church control and a strengthening of morale through an interdenominational board giving constructive and more adequate service, in which ideals could be none the less objectified. Most of the havens today are rather grim and barren hostels. There is little treatment that suggests long-range planning and case work skills to aid the men in their physical and mental upbuilding. The recommendations made in the survey material are commendable, but the routes of change will probably be as snail-like in progress as those along which the Female Charitables have traveled.

If one should think that it were only the private control of charitable funds that has clung to purposes of long ago, he might glance at the performance of the historic trusts that the Overseers of the Poor of the Town of Boston began to administer as a private charitable corporation, April 25, 1772.¹ The charter granted at that date still binds and the Board of the Overseers of the Public Welfare sends in an annual financial statement to the State Department of Public Welfare, showing the numbers aided through the trusts, the amount of total investment and the expenditures, together with other

1. Chapter 20, Province Laws 1771-1772, Vol. V., p. 177.
Corporate title has been changed twice: 1864 and 1921.

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information.¹

Looking into the body of the private trusts, city supervised, we find that it was generally the eminently genteel family and the pious individual who had seen better days than the benefactor, long since dead, had in mind. Their purposes suggest an outmoded social order and in some cases the lag between human behavior and needs, and human understanding of those needs has been so great that the powers of the Supreme Judicial Court have been invoked to the end that the funds might be applied in a manner as near as possible to the general intent of the donor.² The Jeffries Fund,³ for instance, was established in 1786 "to purchase tea, coffee, chocolate and sugar for the refreshment of those persons who, in the providence of God are, or shall be, reduced and obliged to take shelter in the almshouse, after having lived reputably; the Overseers of the Poor to be judges as to the persons, but always giving preference to the pious poor". The Supreme Judicial Court, appealed to in 1908, ruled that the items enumerated had become necessities rather than luxuries, and rendered the

1. Report for year ending December 31, 1937: 75 aided, \$17,340 expended in relief, total property \$571,825.16; figures exclusive of Boylston Fund.

2. Supra in re cy pres.

3. David Jeffries, Treasurer of the Town of Boston from 1750 to 1781.

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judgment that the income of this fund might be used at the discretion of the Overseers in general relief.

Another of the trusts was set up to "aid Protestant widows and single women without distinction of color".¹ Still another was expended upon the referral of ministers for provisions at Thanksgiving and specified that unmarried Protestant females should not be overlooked. In one, the beneficiaries must have reached fifty years of age and they forfeited the dole if they married; besides being single they also had to be poor, worthy and Protestant. The John Boylston's Charitable Donations for the Benefit and Support of Aged Poor Persons, and of Orphans and Deserted Children² was incorporated in 1803 to provide for "poor and decayed householders of the town of Boston, not under fifty years of age, persons of good character and reduced by the acts of Providence, not by indolence, extravagance or other vice";³ another section proffered aid for the "nurture and instruction of poor orphan and deserted children of the town of Boston for the "purpose of cloathing, Feeding and teaching such orphans untill they shall severally attain the age of

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1. Annual Reports of the Overseers of the Public Welfare, Boston, contain detailed statements as to the purposes and expenditures.
 2. Will #20419, probated 1795, Suffolk County Records, Vol. 94, p. 33.
 3. Chapter 171.

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fourteen years and no longer, when if not before they are to bind them out to such useful arts and business as they may be capable of at the discretion of the said overseers". The charter purpose was amended in 1813-14 to authorize the Overseers to bind out "in virtuous families or to reputable trades, or useful arts or occupations, such poor persons, orphans or deserted children as receive, or may hereafter receive the benefit of said John Boylston's Charitable Donations until they arrive at the age of twenty-one years".

The Boston Board of Overseers have, of course, realized the obsolescence of the trust purposes in these funds, one of which dates back to 1701.¹ It takes but little imagination to see that "learning poor children to read the word of God and to write if need be", or helping the worthy poor, the pious, the decayed and those who have lived reputably may not be of such practical benevolence as the furnishing of a blanket, a sweater, an overcoat or a pair of shoes. in 1934 at the height of the recent economic depression the Board, upon petition, modified many of the provisions which were intended by the stern and righteous Puritans of early Boston to protect the gentility of distressed citizens in that town. The Court, in its power, had earlier interpreted the humanitarian wishes of one testator in terms of present

1. Gift of Lieutenant Governor William Stoughton.

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day needs.¹

Sufficient material has been presented to emphasize the coercive acquiescence and the presence of a certain moralistic tone on the part of a beneficiary before he could hope to have food, clothing, lodging or any of the necessities of life. The emotional, not the scientific, approach was sentimentally adhered to. The writer was told not long ago by one whose sister used to work with Octavia Hill that the tenements for the underprivileged which Miss Hill would like to have seen developed in the United States in the 1880's, when charity was taking its initial steps in organization, were not always looked upon with favor because the intelligent poor seemingly preferred lower standards of housing to a shelter which was offered as a bait to reform without a sound psychological basis for such change in character development.

Organized charity was the next logical step and it is because of the sincerity and courageous, faithful effort of such pioneers as Horace Mann, Dorothea Lynde Dix, Samuel Gridley Howe, Charles Ware, Mrs. Annie Fields, Annette Rogers, Frances Morse, Zilpha Smith and Mary Richmond that we can write in the following pages about procedures that suggest the provenience of social work as a profession.

1. Supra p. 78.

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Chapter VII

Trends in Charitable Purposes

Every man desires to be his own architect, and the creator of his own design ...and the last and greatest insult you can offer to the human race is to regard it as a herd of cattle to be driven to your selected pasture. You deprive the individual of his last rag of self-respect, the most precious of his possessions, himself.....

W. Macneile Dixon

In closing the hiatus between early and modern techniques in social work, let us glance at some of the changes in case work methods before touching upon the purposes and goals which certain charitable corporations have expanded to include. A consideration of the material outlined in the preceding chapter serves to show that the primary attempts to improve the social condition of the poor degenerated into a mire of relief giving only. It was a philosophy of philanthropy, correction and charity with a sort of restraining moral leash. Some of the examples reveal plainly that discipline was associated with the alleviation of human needs. It is difficult today to understand why there should have been a presumption of wrong-doing in the misery of the poor.

With the beginnings of organized charity in the late 1870's and the 1880's, there is still a theory of reform, elevation and improvement with no stress on the importance

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With the beginnings of organized charity in the late 1870's and the 1880's, there is still a theory of reform, elevation and improvement with no stress on the importance

of reorganizing the self from within. Louisa Lee Schuyler writing in 1878¹ in analysis of the aims of organized charity thought that there should be more dealings with the larger questions of reform and in studying improved dwellings for the poor, cooperative stores and Provident Dispensaries,--all of which were a powerful agency in behalf of the elevation of the poor in their homes,--that the visiting must be searching, frequent and intelligent; that relief when given should aim at the permanent improvement of the relieved; that visitors should not dispense relief on their own responsibility; that there should be a centralized and cooperative system of relief in which all societies and persons must take part under direction; that the tendency must be always to elevate and never to pauperize the poor.

When the Constitution of the Boston Associated Charities was drawn up, Robert Treat Paine, the first president, believed that there should be incorporated in the policies of that society the following:²

"To provide that the case of every applicant for relief shall be thoroughly investigated; to place the results of such investigation at the disposal of the Overseers of the Poor, or Charitable Societies and Agencies and of private persons of benevolence; obtain employment, if possible; if not, to obtain, as far as necessary, suitable assistance for every deserving applicant, from public authorities, charitable agencies, or benevolent individuals; to make all relief

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1. State Charities Aid Association, New York, #24
 2. Provisional Constitution adopted February 26, 1879; final, December 19, 1879.

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1. State Charities Aid Association, New York, 1884
2. Provisional Constitution adopted February 26, 1878; final, December 19, 1879.

either by alms or charitable work conditional upon good conduct and progress,--so that, wherever possible, the needy might graduate from the rolls of relief and their children be prevented from falling into need."

A transitional note is sounded in Mrs. Fields' book "How to Help the Poor",¹ published over fifty years ago, in which she cites the example of a man wallowing in a swamp and starving. Passersby, alarmed at his distress and not stopping to inquire its source, threw in biscuits to keep him alive. As the act was constantly repeated, the beneficiary began to expect the largess and to enjoy the softness of the oozy, slimy bed in which he lay.

With the progressive interest in sociology, psychology, psychiatry, and psycho-analysis, the path was opened for understanding the client as an individual personality rather than merely in his reaction toward certain social factors. The emphasis formerly on collecting information in regard to such evidence as family forces, health, employment, environment, religion and recreation as so many detached units has by a slow, intelligently directed and experimental process swung to a case work relationship between worker and client with a highly skillful professional approach. Whereas the client used to be coerced into following along the lines his benefactor had considered "right", it is now believed that

1. A copy may be located in the rare book department of the Boston Public Library. It is especially interesting in that it was presented to Oliver Wendell Holmes, M.D., whose autograph it bears.

either by aims or charitable work conditional upon good conduct and progress,--as that, wherever possible, the needy might graduate from the rolls of relief and their children be prevented from falling into need."

A transitional note is sounded in Mrs. Field's book "How to Help the Poor",¹ published over fifty years ago, in which she cites the example of a man wallowing in a swamp and starving. Passerby, alarmed at his distress and not stopping to inquire its source, threw in biscuits to keep him alive. As the act was constantly repeated, the beneficiary began to expect the largess and to enjoy the softness of the ooze, slily bed in which he lay.

With the progressive interest in sociology, psychology, psychiatry, and psycho-analysis, the path was opened for understanding the client as an individual personality rather than merely in his reaction toward certain social factors. The emphasis formerly on collecting information in regard to such evidence as family forces, health, employment, environment, religion and recreation as so many detached units has by a slow, intelligently directed and experimental process swung to a case work relationship between worker and client with a highly skillful professional approach. Whereas the client used to be coerced into following along the lines his benefactor had considered "right", it is now believed that

1. A copy may be located in the rare book department of the Boston Public Library. It is especially interesting in that it was presented to Oliver Wendell Holmes, M.D., whose autograph it bears.

there should be no contact at all if the client does not appear of his own willing. Otherwise, a resistance is set up against which there can be no effective case work and but little possibility for constructive self-development. The dynamics of behavior as propounded in the Gestalt Psychology¹ has accounted in large measure for the new basis of case work.

The study of the individual in his relation to the total situation, and not in segments, has replaced the implanting of the client in one of the fixed catagories or classifications, where he was conveniently fitted without regard for his personality, which might have been warped and pinched through heredity, environment, or emotional imbalance due to some hidden force of individual striving. While previously facts had been sought as something necessarily concrete, it was gradually dawning that intangible thoughts could be very valuable as facts in a treatment plan. The old liability-assets schedule has given way to a psychiatric approach and evaluation in order that a client may be helped to become an integrated social being. Case work technique necessarily became more scientific when there was a tie-up with psychiatry, involving not only the social conditionings but the ideological, physical and mental as well. In the practice of the

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relationship between worker and client there came the realization that prolonged study was necessary before one could be adequately trained to treat the client professionally. In the different phases of social treatment the student's learning needs extend into different levels:¹

1. Learning reactions in reference to the case records and routine procedures
2. Levels of learning in relation to functioning as a case worker
3. Learning reactions as they relate to supervision

If there is to be the relationship of one's self to others in the professional service of helping, the worker must become conscious of what he does to the clients, how he uses them and how they react to the therapeutic relationship, with a finer discrimination than those who used to talk over the needs of the "decayed" at the monthly meetings in the early 19th century could have been capable of appreciating, or the worker of the early 1900's would have thought possible. There is no easy road to professional competence, whose special skills connote intensive training, research, experimentation, scientific analysis and a learning process that should develop the worker as well as the client. To borrow from Dr. Robinson again, she would classify as characteristics of the case

1. Analysed by Dr. V. P. Robinson in Supervision in Social Case Work (1936), pp. 30-50.

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worker's technique in the search for a relationship in which to solve a problem, the following:¹

1. Understanding the conflicts which the arbitrary control in the worker-client relationship may produce
2. Understanding the problem of ambivalence in reaction,--interpreting the client to himself
3. Identification with the morally right or the socially right, as the client conceives it
4. Objectivity, in relation to client and community standards

The modern social worker is a trained expert in knowing the client through an understanding of the mechanisms of human behavior and he is not a dictator.

Mr. Linton Swift of the Family Welfare Association of America expresses succinctly in the following quotation the range of emphases in social case work as they lie between the two extremes of needs rooted in society and those which are deeply embedded within the emotional drives of the individual. He has in mind the social case-worker and his treatment of the individual in his relation to the whole personal-social setting, which would include:

"(1) an emphasis upon socio-economic needs, where social case work itself can deal only with individual aspects, leaving the broader social problem to be met through social action; (2) emphasis upon problems of the individual's more immediate personal environment, requiring the synthesis of a variety of community services and opportunities in relation

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to the particular needs of each client; (3) emphasis upon those emotional needs and attitudes which may be susceptible of social case work treatment chiefly on a rational or conscious level; and (4) the more fundamental emotional needs which are rooted in deep unconscious conflicts, which are on the dividing line between social case work and psychiatry, and are treated directly by social case workers only very cautiously or not at all.

"The range of social case work treatment thus lies between, but does not itself include, social action and psychiatry at opposite ends of the scale. The major areas of need and of emphasis in treatment indicated above are of course not mutually exclusive; problems of all four types may exist in almost any personal situation, but we frequently find that attention to the key need in one area may directly affect the others."

With this brief focussing on some of the highlights in the course from the role of the friendly visitor to that of the professional worker and the corresponding goal of educational standards, it will be interesting now to review a few of the concrete programs in Massachusetts in which some of the private charitable corporations or charitable trusts have established the case work relationship, which we have only meagrely expressed.

A children's agency in the Commonwealth, organized in 1863, having progressed through the institutional and foster-home care stages, had the fact impressed that not every foster home was adequate to the point of coping with a pre-delinquent problem youth. Consequently, it was decided to try out the experiment of a temporary diagnostic center set up as nearly as possible like a natural home and under the supervision of a young social worker and his wife, the aim being to form one small family group with all that savors of institutionalism

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left out. The house is semi-modern and contains twelve rooms. The juvenile court and social agencies refer problem cases. The one who has been the case worker drops out of the picture temporarily and the youth undergoes psychological and psychiatric study under experts in those fields. There is a weekly clinic in the offices of the sponsoring agency. The local schools offer their services.

Every possible consideration is given to the boys as personalities. There are no locked doors, the mail is not censored, and there are no rules for behavior in the yard or streets. It is intended that the visit in the home shall not be of long duration, and the average stay is about six weeks. During that time there is opportunity for enough direct, indirect and clinical observation so that the type of foster home to which a boy may adapt himself will be indicated. It has been said by an interested person that he has been able to get as much information, through this method, in two weeks' time, as formerly was procurable in clinics alone in two months.

The boys may dress up their rooms as they wish and in this there is often brought out trends in their personalities. Saturday mornings the youths "clean house" and in the afternoon there is a trip to some distant place in a station wagon. Sundays they go to church if they choose and there is usually a sightseeing trip in the afternoon with a supper cooked out of doors. The boys are free to pursue their hobbies, be it

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chicken-raising or drawing cartoons! Restraint is at a minimum. The youths, coming as many of them do from broken or unhappy homes have the opposite condition objectified and one has remarked that he had seen a happily married couple for the first time. One of the problems is to break the attachment after the diagnosing period is over, because the brief stay seems to impress upon the boys just about everything that had been lacking in their natural homes. Such a plan should be helpful in returning a better adjusted boy to his own home or to a foster home and to society. The experiment is very new, too much so to make an adequate evaluation possible. There are many questions to be weighed, one of them the expense to the Society. However, it is readily seen that as a social experiment, the project is full of potentialities.

About six years ago in a large city in Massachusetts the urgency of a temporary home for boys and young men who were drifting about was apparent. Ordinarily the youths would have been sent to men's shelters and there have been exposed to the practices of the hardened transient. It was felt that if a homelike place, instead of a wayfarers' lodge, friendly interest instead of derision, and counselling in place of condemnation could be provided, a happier and more useful young man would be the result. The plan was worked out on a cooperative basis. One association supplied rent, lights, heat and supervision. Another furnished clothing, food, recreation and a general supervision of the project. The case

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work investigation and planning of a future program were the responsibility of the referring agency. The transient, the homeless, the parolee and probationer, the underprivileged and the special program boy were taken under care. The types of program developed include the school work, comprising industrial work, leadership (as expressed in gymnasium and scout work), and administrative and maintenance work at the shelter, plus school study. In this the boy earns his board, room and \$1.00 a week, the rate being set at about 35¢ an hour. Then there is the working boys' program in which the boys are offered a sheltered workshop plan for purposes of character adjustment. The aim in this division is preparation for business on a wage-earning basis outside. There is a low-cost room and board program for those who earn small wages as messengers or in restaurants, and a semi-supervised housing program which is carried out in cooperation with a social agency. There is a short-time service for younger boys for whom treatment plans are being worked out by societies that have found them in destitute and irresponsible families. Finally, there is a summer camp project which is a three-month period of work and play. Health, character development and spiritual inspiration are fostered and there is an organized and active recreational program. Each boy has a definite number of working hours a day in the camp routine, the recompense for which comes in board, room and \$2.00 per week.

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In still another group, which was set up under a declaration of trust in 1934 and as such is obligated to file a certificate of its financial condition with the State Department of Public Welfare annually, the change of attitude in child care has obviously gone a considerable distance since 1803. Not going into the physical set-up through which the purpose is carried out, nor the type of supervision under trained psychologists, there is reproduced here only the objectives as they are set forth in the trust indenture. These stress the intent to see the child in his own world and as an individual worthy of the finest sense of understanding:¹

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"Almost without exception in his own heart the problem child believes that he is good, not bad. There is widespread misunderstanding, hence misinterpretation of him by the adult world. We tend to judge his conduct and his personality in terms of our own social and ethical concepts and standards. Thus measured and condemned, he is indeed beyond hope, for the attitude of the adult world renders us helpless to help him.

"Encountering this adult disapproval, but believing otherwise at heart, the child feels that his situation, as it differs from that of the normal child, is in the nature of an unaccountable injustice from which he suffers. Further he feels that this adult disapproval confirms a wrong against him, he is therefore forced to think of himself either as inferior to others, hence condemned by them, or as culpable in some mysterious way, of which he knows nothing. Such feelings cause him to react toward society as though society were an enemy. He is a-social.

"Correction of this tragic condition involves a great care, for such a child must be led not only to understand himself and his situation, but to understand and hence to bear tolerantly the people and the factors in his social order responsible for or seemingly involved in his plight. Yet by painstaking nourishment of body and being, he can be reclaimed to normal happy living.

"It now seems well to find ways to close this gap between the mal-adjusted child and the world that condemns him, and best, in doing so, to espouse the principle of direct unassuming human relationships day by day, hard work and steady, conscientious judgment, initiated by and with people trained to know the child's wounded point of view and its essential or non-essential differences from the adult, and the steps that will carry over between them."¹

Whether the optimism in the third paragraph in the preamble to the instrument has been borne out, or not, the writer would not be qualified to judge. Perhaps the period of time involved before definite results can be shown through statistics is not sufficiently distant from the launching of

1. Middlesex Registry of Deeds, Book 5837, p. 71.

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Enough programs have been sketched to confirm the advance in case work that has been made by progressive charitable agencies. The three modern projects noted,--and all are suggestive of the philosophy of Horace Mann that "for all that grows, one former is worth 100 reformers,"--strengthen the belief that it is only as the client is allowed to participate in the plan as "himself" that adjustments can be effected between the disadvantaged and his social environment. The idea has first to be born, then nourished through the reflection and vision of the planner and finally carried to the status of a concrete program by understanding, earnest, socially-minded administrators. When Mr. Street says that the governing board is the mainspring in social agency administration, he has made a timely and important observation.

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Chapter VIII

Summary and Conclusion

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Perception of things as they are
is but a step in the process of mak-
ing them different.....

John Dewey

It has been the objective of this treatise to formulate briefly the course of "Charity" in some of its historical, legal and social implications. There are individuals who oppose the use of the word today, and more than one corporate title in Massachusetts has been changed to leave out this designation. Others believe that there is still the inference of love in the term, as its derivation and 13th Corinthians signify. Probably the Statute of Elizabeth has done more than any other single step to focus attention on legal, charitable uses. Because these could best be carried out through organization, the corporate entity has been used as the machinery to establish the purposes and the management under which they shall be administered. A charitable corporation as it is set up in Massachusetts has been minutely described, followed by court interpretations emphasizing the liberal, legal attitude toward donors with charitable intent and the whole public who may benefit therefrom. A charitable trust in Massachusetts, if properly created and administered, is indeed a perpetuity.

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There has been the thesis, also, that a charitable corporation may have a social evaluation and that presumption is strengthened not only during the intensive case work practiced in the course of the investigation of petitions for charters, but later also as the purposes begin to crystallize. Not all groups are aware of the peculiar standards that the social obligation in the assumption of a public trust imposes and their attempts to gain community support and respect fail utterly. Others, in their lack of experience, yet with a fluid attitude, are glad to contact the State Department of Public Welfare for directional advice and suggestion. This is given as a public service, always with discernment as to the source of inquiry and the respect to which it is entitled.

A corporation by its very creation becomes a legal personality and charters of charitable corporations are set off from business and other types by the attributes of a social purpose, in the acquisition of which many privileges accrue. Not on account of the exemptions, surely, but because of a genuine desire to help fellow men in need, should a charitable charter be sought.

The contrast between the earnest, but often misguided and palliative efforts of the earlier organizations, and the scientific and professional approach of some of the modern groups has been delineated. The aids which a social welfare agency has to offer may come to be of such standards

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and values that not only those in need of relief plus professional help will seek it, but, in addition, anyone in the community who is not in the financially dependent class may be offered a sort of "general practitioner" service in the field of case work. Perhaps this is the next logical step in the progress of the family welfare agency.¹ In fact, some of these groups have already changed their corporate titles to "Family Service Association" or "Family Consultation Center". This helps to release the erroneous idea, which many hold, that such a society is for relief only.

Nothing has been presented during the exposition of the subject in regard to the function of the board of a charitable corporation. There is clearly indicated within agency boards the need of professional growth associated with a learning process, just as Dr. Robinson points out is necessary in the client-worker relationship.

In conclusion, differences between good and bad boards will be articulated. The personnel of a board is an interesting analysis; some one has said that at least one-third should be women! The membership should represent persons from business and professional groups, from different religious denominations, from the industrial field and certainly

1. A concept developed by the general secretary of the Family Welfare Society of Boston in the December 1938 bulletin of the Boston Council of Social Agencies.

and values that not only those in need of relief plus professional help will seek it, but, in addition, anyone in the community who is not in the financially dependent class may be offered a sort of "general practitioner" service in the field of case work. Perhaps this is the next logical step in the progress of the family welfare agency.¹ In fact, some of these groups have already changed their corporate titles to "Family Service Association" or "Family Consultation Center". This helps to release the erroneous idea, which many hold, that such a society is for relief only. Nothing has been presented during the exposition of the subject in regard to the function of the board of a charitable corporation. There is clearly indicated within agency boards the need of professional growth associated with a learning process, just as Dr. Robinson points out is necessary in the client-worker relationship. In conclusion, differences between good and bad boards will be articulated. The personnel of a board is an interesting analysis; some one has said that at least one-third should be women. The membership should represent persons from business and professional groups, from different religious denominations, from the industrial field and certainly

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those familiar with social conditions, or who are in work necessitating social contacts as a school principal or superintendent, and a judge or skilled social worker.

All persons should be chosen because they are strong characters and for the reason that they have something to contribute to the carrying out of the purposes of the agency they sponsor. Street believes that board members should possess intelligence, the power to influence public opinion and the ability to think of themselves as individuals rather than as representatives of a particular group; also, that they should be able to understand the nature of the problem of the organization, be ready to give time, have a real desire that the work of the agency shall advance and possess the respect and confidence of the community.¹ A board is bad when it tends to become hereditary and is suggestive of dominant families from generation to generation. It is inefficient when it is made up of the ultra-conservative, or those interested in social climbing. The member who accepts just "to please a friend" or with self-interest instead of concern for community betterment can offer but little that is creditable to the organization.² Any board, irrespective of its personnel, gives continuity to the group and is responsible for interpreting the purposes to the pub-

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lic. The one which provides for alternating terms is undoubtedly the best.

It is evident that some boards are moribund, even if not defunct and the association that will state it has had no meeting of any sort for years should forfeit its charter. The board member who has never contacted the activities of his agency, especially if these are motivated in a settlement, club, home, camp, or some other institution has no defense when irregularities and low standards catch the public eye. The person who takes the office of director at the time an agency applies for a charter, who is full of enthusiasm and is insistent that the status of a charitable corporation be sanctioned by the State, yet drops away when the executive gets into difficulty, because of "pressure of business", which really means lack of courage to face the problem, is an excellent example of what a board member should not be. The one who accepts board incumbency in order to give an organization prestige is a welcome addition, if with that there is an honest desire to help in carrying out the policies. Too often that kind of member is present in name only and what has been regarded as influence is a negative element which has allowed an aggressive executive to run wild with the organization in such manner that very serious conditions develop. That day has gone by when prestige alone as a qualification is sufficient.

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Some boards have engaged in a form of publicity which is

far from good social work. By this is meant the type that exploits the client and scars his self-respect. A board should be alert to all implications. Whatever publicity is launched should be of the soundest sort and invite the confidence of the public. Photographs in the press and stories about dependent families in their homes with a notation that the scene is a true one since the feature writer himself visited the house with a case worker, as well as groups of men and women swarming through hospitals, children's homes, clubs and settlements serve to focus attention on the situation of those who might like to efface the fact of class difference,--and do not client personalities merit as much respect as those of the benefactors? Sometimes during the scouting trips and talks promises have been made and not redeemed, a defaulting which has caused discouragement and bitterness. The philosophy of the late psychiatrist, Dr. William A. White, is both relevant and profound: "In every instance where my proper course was in doubt I found that by asking myself which course was the better for the patient, I found my answer without much difficulty".

Pertinent to the policy of purposeful interpretation are the words of Leon Whipple where he says:¹ "...We want some one with the love of truth that distinguishes the scientist, with the vision of a crusader, and with the art

1. Proceedings of the National Conference of Social Work, 1930.

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Pertinent to the policy of purposeful interpretation are the words of Leon Whipple where he says: "We want some one with the love of truth that distinguishes the scientist, with the vision of a crusader, and with the art

to bridge the chasm between these and the plain folks of the world. Our kind of publicity requires on one hand conservatism and reverence for truth, on the other, a large, generous and buoyant humanity. If we have not science, we shall, albeit unwittingly, tell lies and raise false hopes. We shall make mistakes that hurt souls, do hasty and ill-considered things, and come to let the means outweigh the end. But if we are unwilling to treat humans as human, not statistical items, we shall not get our truth heard".

Whoever accepts the responsibility of board membership should regard it as a challenge to creative work and not simply as tenure. The obligation may well be considered as a transforming, rather than a conforming, force. The educational attack, the learning route and the experimental method are tools in effective management. It is a psychological fact that knowledge in any area becomes real to a person only as he relives situations for himself. This involves new experience and there is no more fertile field than that strewn with human problems and social relationships for the application of this truth.

If the boards of social institutions, as we have attempted to identify them, will reach out humbly and with a sense of loyalty to reality, toward goals that are of high professional standards, there need be little fear for the success of charitable corporations in a democratic process.

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